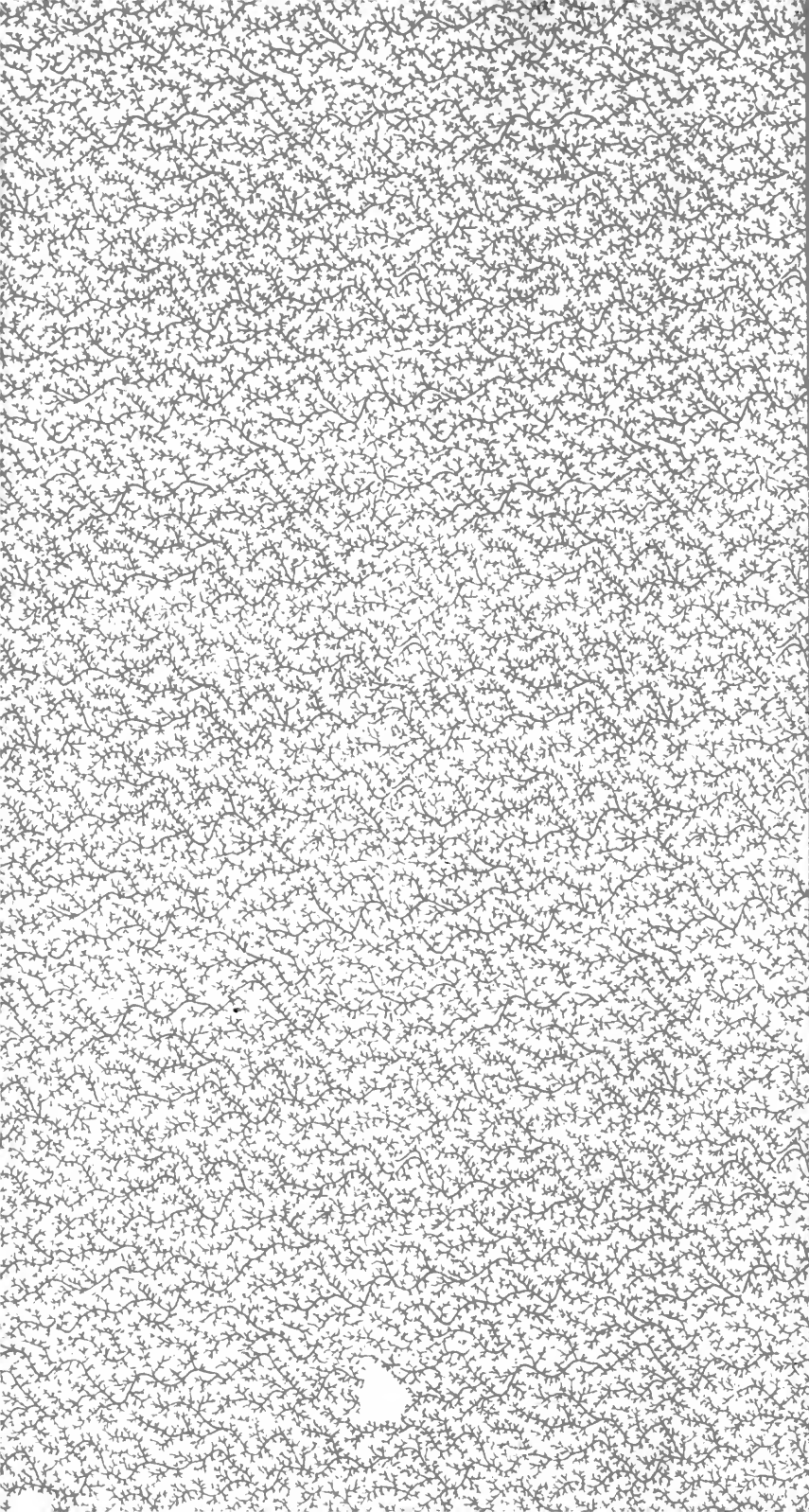


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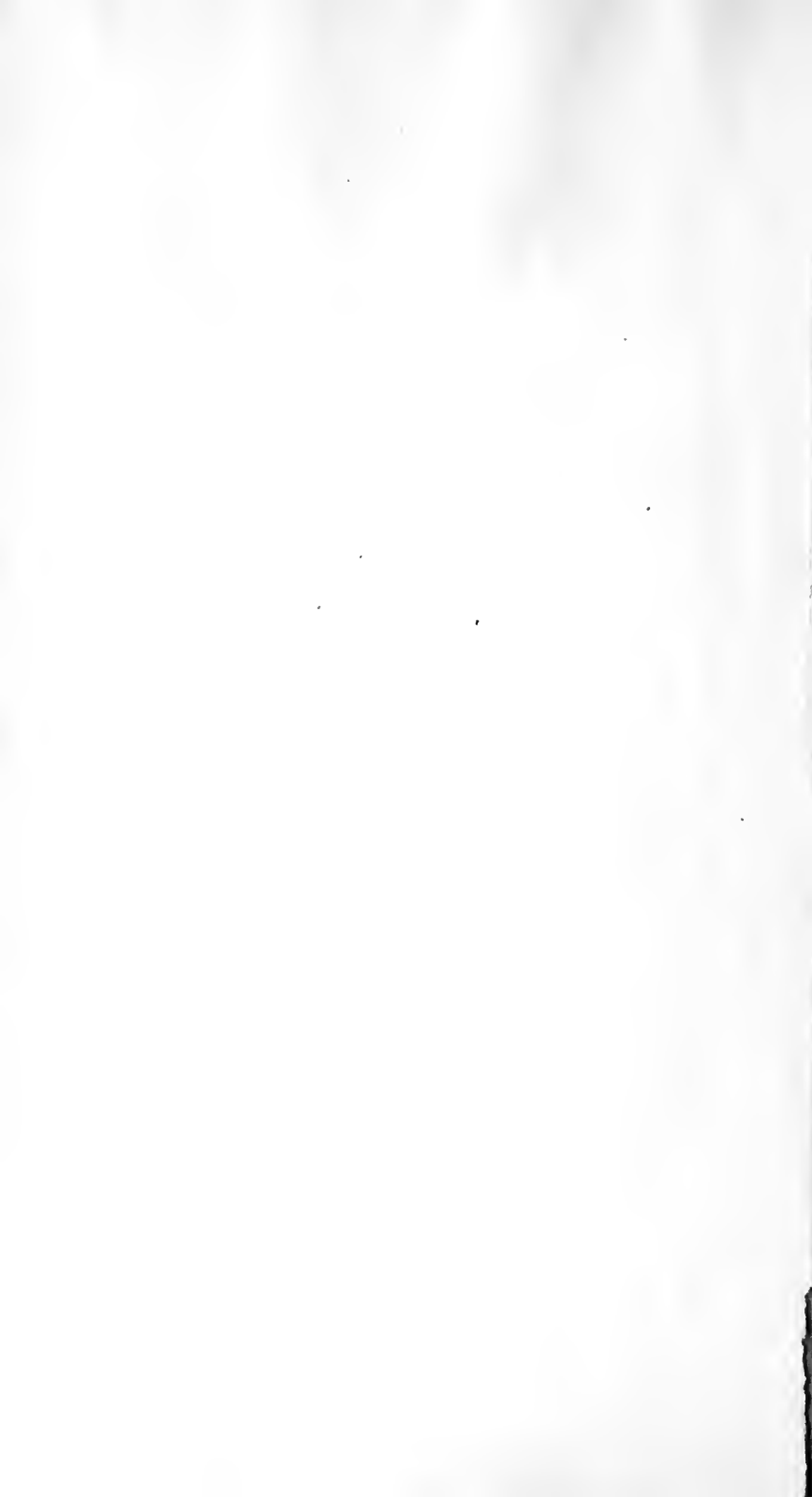
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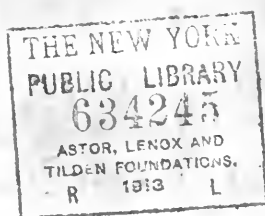


THE
ANSWER AND PLEAS
OF
SAMUEL CHASE,
ONE OF THE ASSOCIATE JUSTICES
OF THE
SUPREME COURT OF THE UNITED STATES,
TO THE
ARTICLES OF IMPEACHMENT,
EXHIBITED AGAINST HIM
IN THE SENATE,
BY THE HOUSE OF REPRESENTATIVES
OF THE
United States,

SUPPORT OF THEIR IMPEACHMENT AGAINST HIM, FOR HIGH CRIMES AND
MISDEMEANORS, SUPPOSED TO HAVE BEEN BY HIM COMMITTED.

NEWBURYPORT:
PUBLISHED BY ANGIER MARCH.

.....
1805.



WOMAN
JULIA
YATTON

IN THE
SENATE OF THE UNITED STATES,
SITTING AS A
HIGH COURT OF IMPEACHMENT,

ON THE

Fourth Day of February, A. D. 1805.

THE UNITED STATES, vs. SAMUEL CHASE.

THE answer and pleas of SAMUEL CHASE, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment exhibited against him in the said Court, by the Honourable the House of Representatives of the United States, in support of their impeachment against him, for high crimes and misdemeanors, supposed to have been by him committed.

THIS respondent, in his proper person, comes into the said court, and protesting that there is no high crime or misdemeanor particularly alledged in the said articles of impeachment, to which he is or can be bound by law to make answer; and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said articles, and each of them, and to the defects therein appearing in point of law, or otherwise; and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this his answer; he submits the following facts and observations by way of answer to the said articles.

The first article relates to his supposed misconduct in the trial of John Fries, for treason, before the circuit of the United States, at Philadelphia, in April and May 1800; and alledges that he presided at that trial, that, "unmindful of the solemn duties of his office, contrary to the sacred obligation by which he stood bound

bound to discharge them, faithfully and impartially, and without respect to persons," he did then, "in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust."

This general accusation, too vague in itself for reply, is supported by three specific charges of misconduct :

1st. "In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended : " which opinion, it is alledged, tended "to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his favor."

2d. "In restricting the counsel for the said John Fries, from recurring to such English authorities, as they believed apposite ; or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client."

3d. "In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavouring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give."

This first article then concludes, that in consequence of this irregular conduct of this respondent, "the said John Fries was deprived of the right secured to him by the *eighth* article, amendatory of the constitution ; and was condemned to death, without having been heard, by counsel, in his defence."

By the *eighth* article amendatory to the constitution, this respondent supposes, is meant the *sixth* amendment to the constitution of the United States ; which secures to the accused, in all criminal prosecutions, the right to have the assistance of counsel for his defence.

In answer to these three charges, the respondent admits that the circuit court of the United States, for the district of Pennsylvania, was held at Philadelphia, in the district

district, in the months of April and May, in the year of our Lord, 1800; at which court John Fries, the person named in the said first article, was brought to trial, on an indictment for treason against the United States; and that this respondent then held a commission, as one of the associate justices of the supreme court of the United States; by virtue of which office, he did, pursuant to the laws of the United States, preside at the above mentioned trial, and was assisted therein by Richard Peters, Esq. then, and still, district judge of the United States, for the district of Pennsylvania; who, as directed by the laws of the United States, sat as assistant judge at the said trial.

With respect to the opinion, which is alledged to have been delivered by this respondent, at the above-mentioned trial, he begs leave to lay before this honorable court the true state of that transaction, and to call its attention to some facts, and considerations, by which his conduct on that subject will, he presumes, be fully justified.

The constitution of the United States, in the third section of the third article, declares that "treason against the United States, shall consist *only in levying war against them*, or in adhering to their enemies, giving them aid and comfort,

By two acts of Congress, the first passed on the third day of March, 1791, and the second on the eighth day of May, 1792, a duty was imposed on spirits distilled within the United States, and on stills; and various provisions were made for its collection.

In the year 1794, an insurrection took place in four of the western counties of Pennsylvania, with a view of resisting and preventing by force the execution of these two statutes; and at a circuit court of the United States, held at Philadelphia, for the district of Pennsylvania, in the month of April, in the year 1795, by William Patterson, Esq. then one of the associate justices of the supreme court of the United States, and the above mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, two persons, who had been concerned in the above named insurrection, namely,

namely, Philip Vigol and John Mitchel, were indicted for treason, of levying war against the United States, by resisting and preventing by force the execution of the two last mentioned acts of Congress; and were, after a full and very solemn trial, convicted on the indictments, and sentenced to death. They were afterwards pardoned by George Washington, then President of the United States.

In the first of these trials, that of Vigol, the defence of the prisoner was conducted by very able counsel, one of whom, William Lewis, Esq. is the same person who appeared as counsel for John Fries, in the trial now under consideration. Neither that learned gentleman, nor his able colleague, then thought proper to raise the question of law, "whether resisting and preventing by armed force, the execution of a *particular* law of the United States, be a "levying of war against the United States," according to the true meaning of the constitution? although a decision of this question in the negative, must have acquitted the prisoner. But in the next trial, that of Mitchel, this question was raised on the part of the prisoner, and was very fully and ably discussed by his counsel; and it was solemnly determined by the court, both the judges concurring, "that to resist or prevent by armed force, the execution of a particular law of the United States, is a levying of war against the United States, and consequently is treason, within the true meaning of the constitution." The decision, according to the best established principles of our jurisprudence, became a precedent for all courts of equal or inferior jurisdiction; a precedent which, although not absolutely obligatory, ought to be viewed with very great respect, especially by the court in which it was made, and ought never to be departed from, but on the fullest and clearest conviction of its incorrectness.

On the 9th of July, 1798, an act of Congress was passed, providing for a valuation of lands and dwelling-houses, and an enumeration of slaves throughout the United States; and directing the appointment of commissioners and assessors for carrying it into execution: And on the 4th day of July, in the same year, a direct
tax

tax was laid by another act of Congress of that date, on the lands, dwelling-houses, and slaves, so to be valued and enumerated.

In the months of February and March, A. D. 1799, an insurrection took place in the counties of Bucks and Northampton, in the state of Pennsylvania, for the purpose of resisting and preventing by force, the execution of the two last mentioned acts of Congress, and particularly that for the valuation of lands and dwelling-houses. John Fries, the person mentioned in the article of impeachment now under consideration, was apprehended and committed to prison, as one of the ring-leaders of this insurrection; and at a circuit court of the United States, held at Philadelphia, in and for the district of Pennsylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treason, by levying war against the United States, before James Iredell, Esq. then one of the associate justices of the supreme court of the United States, who presided in the said court, according to law, and the above mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, who sat in the said circuit court as assistant judge.

In this trial, which was conducted with great solemnity, and occupied nine days, the prisoner was assisted by William Lewis and Alexander James Dallas, Esqs. two very able and eminent counsellors; the former of whom, William Lewis, is the person who assisted as above mentioned, in conducting the defence of Vigol, on a similar indictment. These gentlemen, finding that the facts alledged were fully and undeniably proved, by a very minute and elaborate examination of witnesses, thought proper to rest the case of the prisoner on the question of law which had been determined in the cases of Vigol and Mitchel above mentioned, and had then been acquiesced in, but which they thought proper again to raise. They contended, "that to resist by force of arms a particular law of the United States, does not amount to levying war against the United States, within the true meaning of the constitution, and therefore it is not *treason*, but a *riot* only." This question they argued

ed at great length, and with all the force of their learning and genius ; and after a very full discussion at the bar, and the most mature deliberation by the court, the learned and excellent judge who then presided, and who was no less distinguished by his humanity and tenderness towards persons tried before him, than by his extensive knowledge and great talents as a lawyer, pronounced the opinion of himself and his colleague, “ that to resist or prevent by force, the execution of a particular law of the United States, does amount to levying war against them, within the true meaning of the constitution, and does therefore constitute the crime of treason :” thereby adding the weight of another and more solemn decision, to the precedent which had been established in the above mentioned cases of Vigol and Mitchell.

Under this opinion of the court on the question of law, the jury, having no doubt as to the facts, found the said John Fries guilty of treason, on the above mentioned indictment. But a new trial was granted by the court, not by reason of any doubt as to the correctness of the decision on the question of law, but solely on the ground, as this respondent hath understood and believes, that one of the jurors of the petit jury, after he was summoned, but before he was sworn on the trial, had made some declaration unfavourable to the prisoner.

The yellow fever having appeared in Philadelphia in the summer of the year 1799, the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania, did according to law appoint the next circuit court of that district, to be held at Norris Town therein : Pursuant to which appointment, a circuit court was held at Norris Town aforesaid, in and for the said district, on the 11th day of October in the last mentioned year, before Bushrod Washington, Esq. then one of the associate justices of the supreme court of the United States, and the above mentioned Richard Peters ; at which court no proceedings were had on the aforesaid indictment against John Fries, because, as this respondent hath been informed and believes, the commission of the marshal of the said district had

had expired, before he summoned the jurors to attend at the said court, and had not been renewed ; by reason of which no legal pannel of jurors could be formed.

On the 11th day of April, A. D. 1800, and from that day until the 2d day of May in the same year, a circuit court of the United States was held at Philadelphia, in and for the district of Pennsylvania, before this respondent, then one of the associate justices of the supreme court of the United States, and the above mentioned Richard Peters; then district judge of the United States for the district of Pennsylvania. At this court, the indictment on which the said John Fries had been convicted as above mentioned, was quashed ex officio by William Rawle, Esq. then attorney of the United States for the district of Pennsylvania, and a new indictment was by him preferred against the said John Fries, for treason of levying war against the United States, by resisting and preventing by force, in the manner above set forth, the execution of the above mentioned acts of Congress, for the valuation of lands and dwelling-houses and the enumeration of slaves, and for levying and collecting a district tax. This indictment, of which a true copy, marked exhibit No. 1, is herewith exhibited by this respondent, who prays that it may be taken as part of this his answer, being found by the grand jury on the 16th day of April, 1800, the said John Fries was on the same day arraigned thereon, and plead not guilty. William Lewis and Alexander James Dallas, Esqrs. the same persons who had conducted his defence at his former trial, were again at his request assigned by the court as his counsel ; and his trial was appointed to be had, on Tuesday the 22d day of the last mentioned month of April.

After this indictment was found by the grand jury, this respondent considered it with great care and deliberation, and finding, from the three overt acts of treason which it charged, that the question of law arising upon it, was the same question which had already been decided twice in the same court, on solemn argument and deliberation, and once in that very case, he considered the law as settled by those decisions, with the cor-

rectness of which on full consideration he was entirely satisfied ; and by the authority of which he should have deemed himself bound, even had he regarded the question as doubtful in itself. They are moreover in perfect conformity with the uniform tenor of decisions in the courts of England and Great Britain, from the revolution, in 1688, to the present time, which, in his opinion, added greatly to their weight and authority.

And surely he need not urge to this honorable court, the correctness, the importance, and the absolute necessity of adhering to principles of law once established, and of considering the law as finally settled, after repeated and solemn decisions by courts of competent jurisdiction. A contrary principle would unsettle the basis of our whole system of jurisprudence, hitherto our safeguard and our boast ; would reduce the law of the land ; and subject the rights of the citizen, to the arbitrary will, the passions or the caprice of the judge in each particular case ; and would substitute the varying opinions of various men, instead of that fixed, permanent rule, in which the very essence of law consists. If this respondent erred in regarding this point as settled, by the repeated and solemn adjudications of his predecessors, in the same court and in the same case ; if he erred in supposing that a principle established by two solemn decisions was obligatory upon him, sitting in the same court where those decisions had been made ; if he erred in believing that it would be the highest presumption in him, to set up his opinion and judgment over that of his colleague, who had twice decided the same question, and of two of his predecessors, who justly rank among the ablest judges that have ever adorned a court ; if in all this he erred, it is an error of which he cannot be ashamed, and which he trusts will not be deemed criminal in the eyes of this honorable court, of his country, or of that posterity by which he, his accusers, and his judges, must one day be judged.

Under the influence of these considerations, this respondent drew up an opinion on the law, arising from the overt acts stated in the said indictment, which was conformable to the decisions before given as above mentioned,

mentioned, and which he sent to his colleague, the said Richard Peters, for his consideration. That gentleman returned it to this respondent, with some amendments affecting the form only, but not in any manner touching the substance.

The opinion thus agreed to, this respondent thought it proper to communicate to the prisoner's counsel. Several reasons concurred in favor of this communication.

In the first place, this respondent considered himself and the court as bound by the authority of the former decisions; especially the last of them, which was on the same case. He considered the law as settled, and had every reason to believe that his colleague viewed it in the same light. It was not suggested or understood, that any new evidence was to be offered; and he knew that if any should be offered, which could vary the case, it would render wholly inapplicable both the opinion and the former decisions on which it was founded. And he could not and did not suppose, that the prisoner's counsel would be desirous of wasting very precious time, in addressing to the court an useless argument, on a point which that court held itself precluded from deciding in their favor. He therefore conceived that it would be rendering the counsel a service and a favor, to apprise them beforehand of the view which the court had taken of the subject; so as to let them see in time, the necessity of endeavouring to produce new testimony, which might vary the case, and take it out of the authority of former decisions.

Secondly, There were more than one hundred civil causes then depending in the said court, as appears by the exhibit marked No. 1, which this respondent prays may be taken as part of this his answer. Many of those causes had already been subjected to great delay, and it was the peculiar duty of this respondent, as presiding judge, to take care, that as little time as possible should be unnecessarily consumed, and that every convenient and proper dispatch should be given to the business of the citizens. He did believe, that an early communication of the court's opinion, might tend to the

the saving of time, and consequently to the dispatch of business.

Thirdly, As the court held itself bound by the former decisions, and could not therefore alter its opinion in consequence of any argument ; and as it was the duty of the court to charge the jury on the law, in all cases submitted to their consideration, he knew that this opinion must not only be made known at some period or other of the trial, but must at the end of the trial be expressly delivered to the jury by him, in a charge from the bench : and he could not suppose, and cannot yet imagine, that an opinion, which was to be thus solemnly given in charge to the jury, at the close of the trial, could make any additional impression on their minds, from the circumstance of its being intimated to the counsel before the trial began, in the hearing of those who might be afterwards sworn on the jury.

And, lastly, it was then his opinion, and still is, that it is the duty of every court of this country, and was his duty on the trial now under consideration, to guard the jury against erroneous impressions respecting the laws of the land. He well knows, that it is the right of juries in criminal cases, to give a general verdict of acquittal, which cannot be set aside on account of its being contrary to law, and that hence results the power of juries, to decide on the law as well as on the facts, in all criminal cases. This power he holds to be a sacred part of our legal privileges, which he never has attempted, and never will attempt to abridge or to obstruct. But he also knows, that in the exercise of this power, it is the duty of the jury to govern themselves by the laws of the land, over which they have no dispensing power ; and their right to expect and receive from the court all the assistance which it can give for rightly understanding the law. To withhold this assistance, in any manner whatever ; to forbear to give it in that way which may be most effectual for preserving the jury from error and mistake ; would be an abandonment or forgetfulness of duty, which no judge could justify to his conscience or to the laws. In this case, therefore, where the question of law arising on the indictment,

dictment, had been finally settled by authoritative decisions, it was the duty of the court, and especially of this respondent as presiding judge, early to apprise the counsel and the jury of these decisions, and their effect, so as to save the former from the danger of making an improper attempt to mislead the jury in a matter of law, and the jury from having their minds preoccupied by erroneous impressions.

It was for these reasons, that on the 22d day of April, 1800, when the said John Fries was brought into court, and placed in the prisoners' box for trial, but before the petit jury was impannelled to try him, this respondent informed the abovementioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas, not being then in court, "that the court had deliberately considered the indictment against John Fries for treason, and the three several overt acts of treason stated therein: That the crime of treason was defined by the constitution of the United States: That as the federal legislature had the power to make, alter, or repeal laws, so the judiciary only had the power, and it was their duty, to declare, expound and interpret the constitution and laws of the United States: That it was the duty of the court, in all criminal cases, to state to the petit jury, their opinion of the law arising on the facts; but the petit jury in all criminal cases, were to decide both the law and the facts, on a consideration of the whole case: That there must be some constructive exposition of the terms used in the constitution, 'levying war against the United States:' That the question, what acts amounted to levying war against the United States, or the government thereof, was a question of law, and had been decided by judges Patterson and Peters, in the cases of Vigol and Mitchel, and by judges Iredell and Peters, in the case of John Fries, prisoner at the bar, in April 1799: That judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of judges Patterson, Iredell, and Peters: That to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the
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great number of civil causes depending for trial at that term, the court had drawn up in writing, their opinion of the law, arising on the overt acts, stated in the indictment against John Fries; and had directed David Caldwell their clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they should have been impannelled and heard the indictment read to them by the clerk, and after the district attorney should have stated to them the law on the overt acts alledged in the indictment, as it appeared to him."

After these observations, this respondent delivered one of the abovementioned copies to the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him. Some observations were then made on the subject, by him and the abovementioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

And this respondent further saith, that the paper marked exhibit No. 2, and herewith exhibited, which he prays leave to make part of this his answer, is a true copy of the original opinion drawn up by him, and concurred in by the said Richard Peters, as above set forth, which original opinion is now in the possession of this respondent, ready to be produced to this honorable court. He may have erred in forming this opinion, and in the time and manner of making it known to the counsel for the prisoner. If he erred in forming it, he erred in common with his colleague and with two of his predecessors; and he presumes to hope that an error, which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known this opinion, he feels a just confidence, that when the reasons which he has alledged for his conduct, and by which it seemed to him to be fully justified, shall come to be carefully weighed,

weighed, they will be sufficient to prove, if not that this conduct was perfectly regular and correct; yet that he might sincerely have considered it as right; and that in a case where so much doubt may exist, to have committed a mistake, is not to have committed a crime.

And this respondent further answering insists, that the opinion thus delivered to the prisoner's counsel; viz. that "any insurrection or rising of any body of people within the United States, for the purpose of resisting or preventing by force or violence, under any pretence whatever, the execution of any statute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war against the United States, within the contemplation and true meaning of the constitution of the United States," is a legal and a correct opinion, supported not only by the two previous decisions abovementioned, but also by the plainest principles of law and reason, and by the uniform tenor of legal adjudications in England and Great Britain, from the revolution in 1688 to this time. It ever was, and now is his opinion that the peace and safety of the national federal government, must be endangered, by any other construction of the terms "levying war against the United States," used by the federal constitution; and he is confident that no judge of the federal government, no judge of a superior state court, nor any gentleman of established reputation for legal knowledge, would or could deliberately give a contrary opinion.

If however this opinion were erroneous, this respondent would be far less censurable than his predecessors, by whose example he was led astray, and by whose authority he considered himself bound. Was it an error to consider himself bound by the authority of their previous decisions? If it were, he was led into the error by the uniform course of judicial proceedings, in this country and in England, and is supported in it, by one of the fundamental principles of our jurisprudence. Can such an error be a crime or misdemeanor?

If, on the other hand, the opinion be in itself correct, as he believes and insists that it is, could the expression

sion of a correct opinion on the law, wherever and however made, mislead the jury, infringe their rights, or give an improper bias to their judgments? Could truth excite improper prejudice? Could the jury be less prepared to hear the law discussed, and to decide on it correctly, because it was correctly stated to them by the court? And is not that a new kind of offence, in this country at least, which consists in telling the truth, and giving a correct exposition of the law?

As to the second specific charge adduced in support of the first article of impeachment, which accuses this respondent "of restricting the counsel for the said Fries, from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client," this respondent admits that he did, on the above mentioned trial, express it as his opinion to the aforesaid counsel for the prisoner, "that the decisions in England, in cases of indictments for treason at common law, against the person of the king, ought not to be read to the jury, on trials for treason under the constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said revolution, to be read to the court or jury, for the purpose of shewing what acts have been considered by those courts, as a constructive levying of war against the king of that country, in his regal capacity, but not against his person; because levying war against *his government*, was of the same nature as levying war against *the government of the United States*: but that such decisions, nevertheless, were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect, as having been delivered after full consideration, by men of great legal learning and ability.

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These are the opinions which he did, on that occasion, deliver to the counsel for the prisoner, and which he then thought, and still thinks, it was his duty to deliver. The counsellors admitted to practice in any court of justice are, in his opinion, and according to universal practice, to be considered as officers of such courts, and ministers of justice therein, and as such, subject to the direction and control of the court, as to their conduct in its presence, and in conducting the defence of criminals on trial before it.—As counsel, they owe to the person accused, diligence, fidelity, and secrecy, and to the court and jury, due and correct information, according to the best of their knowledge and ability, on every matter of law which they attempt to adduce in argument. The court, on the other hand, hath power, and is bound in duty, to decide and direct what evidence, whether by record or by precedents of decisions in courts of justice, is proper to be admitted for the establishment of any matter of law or fact. Consequently, should counsel attempt to read to a jury, as a law still in force, a statute which had been repealed, or a decision which had been reversed, or the judgments of courts in countries whose laws have no connection with ours, it would be the duty of the court to interpose, and prevent such an imposition being practised on the jury. For these reasons, this respondent thinks that his conduct was correct, in expressing to the counsel for Fries, the opinions stated above. He is not bound to answer here for the correctness of those principles, though he thinks them incontestible; but merely for the correctness of his motives in delivering them. A contrary opinion would convert this honorable court, from a court of impeachment into a court of appeals; and would lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office: that error in judgment is a punishable offence, and that crimes may be committed without any criminal intention.—Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained; so

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utterly subversive of all that part of our system of jurisprudence, which has been wisely and humanely established for the protection of innocence, this respondent deems it his duty now, and on every fit occasion, to enter his protest and lift up his voice ; and he trusts that in the discharge of this duty, infinitely more important to his country than to himself, he shall find approbation and support in the heart of every American, of every man throughout the world, who knows the blessings of civil liberty, or respects the principles of universal justice.

It is only then, for the correctness of his motives in delivering these opinions, that he can now be called to answer ; and this correctness ought to be presumed, unless the contrary appear by some direct proof, or by some violent presumption, arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge, so palpably erroneous, unjust, and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

Do the opinions now under consideration bear any of these marks ? This honorable court need not be informed that there has existed in England no such thing as treason at common law, since the year 1350, when the statute of the 25th Edward III, chap. 2, declaring what alone should in future be judged treason, was passed. Is it perfectly clear that decisions made before that statute, 450 years ago, when England, with the rest of Europe, was still wrapped in the deepest gloom of ignorance and barbarism ; when the system of English jurisprudence was still in its infancy ; when law and justice and reason were perpetually trampled under foot by feudal oppression and feudal anarchy ; when, under an able and vigorous monarch, every thing was adjudged to be treason which he thought fit to call so, and under a weak one nothing was considered as treason which turbulent, powerful and rebellious nobles thought fit to perpetrate ; is it perfectly clear that decisions made at such a time, and under such circumstances, ought to be received

received by the courts of this country as authorities to govern their decisions, or lights to guide the understanding of juries? Is it perfectly clear that decisions made in England, on the subject of treason, before the revolution of 1668, by which alone the balance of the English constitution was adjusted, and the English liberties were fixt on a firm basis; decisions made either during the furious civil wars, in which two rival families contended for the crown; when, in the vicissitudes of war, death and confiscation, in the forms of law, continually walked in the train of the victors, and actions were treasonable or praise-worthy, according to the preponderance of the party by whose adherents they were perpetrated; during the reigns of three able and arbitrary monarchs, who succeeded this dreadful conflict, and relaxed or invigorated the law of treason, according to their anger, their policy or their caprice; or during those terrible struggles between the principles of liberty, not yet well defined or understood, on one hand, and arbitrary power, insinuating itself under the forms of the constitution, on the other; struggles which presented at some times the wildest anarchy, at others, the extremes of servile submission, and after having brought one king to the scaffold, ended in the expulsion of another from his throne; Is it clear that decisions on the law of treason, made in times like these, ought not only to be received as authorities in the courts of this country, but also to have great influence on their decisions? Is it clear that decisions made in England, as to what acts will amount to levying war against the king, personally, and not against his government, are applicable to the constitution and laws of this country? Is it clear that such English decisions on the subject of treason, as are applicable to our constitution and laws, are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern absolutely their decisions? Is all this so clear, that a judge could not honestly and sincerely have thought the contrary? that he could not have expressed an opinion to the contrary, without corrupt or improper motives?

If

If it be not thus clear, then must it be admitted that this respondent, sincerely and honestly, and in the best of his judgment, considered these decisions as wholly inadmissible, or admissible only for the purposes and to the extent which he pointed out.

And if he did so consider them, was it not his duty to prevent their being read to the jury, except under those restrictions, and for those purposes? Would his duty permit him to sit silently and see the jury imposed on and misled? to sit silently and hear a book read to them as containing the law, which he knew did not contain the law? Such silence would have rendered him a party to the deception, and would have justly subjected him to all the contumely, which a conscientious and courageous discharge of his duty, has so unmeritedly brought on his name.

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited, either to the court or jury, on the said trial; or declared at any time, that he would not permit the prisoner's counsel to read to the jury, or to the court, any act of Congress whatever. Nor does he remember or believe, that he expressed on the said trial, any disapprobation of the conduct of the circuit court before whom the said case was first tried, in permitting the act of Congress relating to crimes less than treason, commonly called the *sedition act*, to be read to the jury. He admits indeed that he was then and still is of opinion, that the said act of Congress was wholly irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he trusts that the following reasons on which it was founded, will be considered by this honorable court, as sufficiently strong to render it possible, and even probable, that such an opinion might be sincerely held and honestly expressed:—1st, That Congress did not intend by the sedition law, to define the crime of treason by “levying war.” Treason and sedition are crimes very distinct in their nature, and subject

to very different punishments; the former by death, and the latter by fine and imprisonment. 2dly, The sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the United States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3dly, The constitution of the United States is the fundamental and supreme law, and having defined the crime of treason, Congress could not give any legislative interpretation or exposition of that crime, or of the part of the constitution by which it is defined. 4thly, The judicial authority of the United States is alone vested with power to expound their constitution and laws.

And this respondent further answering saith, that after the above mentioned proceedings had taken place in the said trial, it was postponed until the next day, Wednesday, April 23d, 1800; when at the meeting of the court, this respondent told both the above mentioned counsel for the prisoner, "that to prevent any misunderstanding of any thing that had passed the day before, he would inform them that although the court retained the same opinion of the law, arising on the overt acts charged in the indictment against Fries, yet the counsel would be permitted to offer arguments to the court, for the purpose of shewing them that they were mistaken in the law; and that the court, if satisfied that they had erred in opinion, would correct it: and also that the counsel would be permitted to argue before the petit jury, that the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court,

court, "that they did not any longer consider themselves as the counsel for John Fries the prisoner." This respondent then asked the said John Fries, whether he wished the court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and charges, by the advice of the said William Lewis and Alexander James Dallas: whereupon the court ordered the said trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative were withdrawn from the pannel. The said John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without shewing any cause of challenge against them, and as many more as he could shew cause of challenge against. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when, after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the Bench, that if he, or any person for him, could shew any legal ground, or sufficient cause, to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shewn, sentence of death was passed on the said Fries, on Tuesday the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And

And this respondent further answering saith, that if the two instances of misconduct first stated in support of the general charge, contained in the first article of impeachment, were true as alleged, yet the inference drawn from them, viz. "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was denied the benefit of counsel, not by any misconduct, but by the conduct and advice of the two mentioned William Lewis and Alexander Lewis, having been, with their own counsel, appointed by the court as counsel for the prisoner in his defence, and advised him to refuse the counsel offered to him by the court, under the impression that he had been prejudged, and their liberty of defence, according to their own judgment, was restricted by this respondent; but in reality they knew the law and the facts to be against the prisoner, the case to be desperate, and supposed that their conduct, under this pretence, might be successful against the court; might give rise to an opinion that the prisoner had not been fairly tried; and in the event of conviction, which from their knowledge of the facts they knew to be almost certain, might enable the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel, for depriving their client of legal assistance on trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

As little can this respondent be justly charged with having by any conduct of his, endeavored to "wrest from the jury their indisputable right to hear argument, and determine upon the question of law as well as the question of fact involved in the verdict which they were required to give." He denies, that he did at any time declare that the aforesaid counsel should not at any time address the jury, or did in any manner hinder them from addressing the jury on the law as well as on the facts arising in the case. It was expressly stated in the

on delivered as above set forth to William
 had a right to determine the law
 and the said William Lewis and Al-
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 ther answering, saith, that
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 ed, in violation of some law for-
 ng it ; on conviction of which act,
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 and punished therefor, according to
 early results, that no civil officer of the
 n be impeached, except for some offence
 may be indicted at law ; and that no evi-
 received on an impeachment, except such
 ctment at law, for the same offence, would
 e. That a judge cannot be indicted or pun-
 rding to law, for any act whatever, done by
 his judicial capacity, and in a matter of which he
 risdiction, through error of judgment merely,
 out corrupt motives, however manifest his error
 y be, is a principle resting on the plainest maxims of
 eason and justice, supported by the highest legal author-
 ity, and sanctioned by the universal sense of mankind.
 He hath already endeavored to shew, and he hopes with
 success, that all the opinions delivered by him in the
 ource of the trials now under consideration, were cor-
 ect in themselves, and in the time and manner of ex-
 pressing them ; and that even admitting them to have
 en incorrect, there was such strong reason in their fa-
 vor,

vor, as to remove from his conduct every suspicion of improper motives. If these opinions were incorrect, his mistake in adopting them, or in the time or manner of expressing them, cannot be imputed to him as an offence of any kind, much less as a high crime and misdemeanor, for which he ought to be removed from office; unless it can be shewn by clear and legal evidence, that he acted from corrupt motives. Should it be considered that some impropriety is attached to his conduct, in the time and mode of expressing any of these opinions; still he apprehends, that a very wide difference exists between such impropriety, the casual effect of human infirmity, and a high crime and misdemeanor for which he may be impeached, and must on conviction be removed from office.

Finally, this respondent, having thus laid before this honorable court a true state of his case, so far as respects the first article of impeachment, declares, upon the strictest review of his conduct during the whole trial of John Fries for treason, that he was not on that occasion unmindful of the solemn duties of his office as judge; that he faithfully and impartially, and according to the best of his ability and understanding, discharged those duties towards the said John Fries; and that he did not in any manner during the said trial, conduct himself arbitrarily, unjustly or oppressively, as he is accused by the honorable the House of Representatives.

And the said Samuel Chase, for plea to the said first article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said first article is alledged; and this he prays may be inquired of by this honorable court in such manner as law and justice shall seem to them to require.

The second article of impeachment charges, that this respondent, at the trial of James Thompson Callender for a libel, in May 1800, did, "with intent to oppress and procure the conviction of the said Callender, over-rule the objection of John Bassett, one of the jury, who wished to be excused from serving on the said trial, because he had made up his mind as to the publication from which the words, charged to be libellous in the indictment, were extracted."

In

In answer to this article, this respondent admits that he did, as one of the associate justices of the supreme court of the United States, hold the circuit court of the United States, for the district of Virginia, at Richmond, on Thursday the 22d day of May, in the year 1800, and from that day, till the 30th of the same month; when Cyrus Griffin, then district judge of the United States for the district of Virginia, took his seat in the said court; and that during the residue of that session of the said court, which continued till the day of June, in the same year, this respondent and the said Cyrus Griffin, held the said court together. But how far any of the other matters charged in this article, are founded in truth or law, will appear from the following statement; which he submits to this honorable court, by way of answer to this part of the accusation.

By an act of Congress passed on the 4th day of May, A. D. 1798, it is among other things enacted, "That if any person shall write, print, utter or publish, or shall knowingly and wittingly assist and aid in writing, printing, uttering or publishing, any false, scandalous, and malicious writing or writings, against the President of the United States, with intent to defame, or to bring him into contempt or disrepute, such person, being thereof convicted, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment, not exceeding two years:" and "that if any person shall be prosecuted under this act, it shall be lawful for him to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel; and the jury shall have a right to determine the law and the fact, under the direction of the court, as in other cases," as in and by the said act, commonly called the *sedition law*, to which this respondent begs leave to refer this honorable court, will more fully appear.

At the meeting of the last abovementioned circuit court, this respondent, as required by the duties of his office, delivered a charge to the grand jury; in which, according to his constant practice, and to his duty as a judge, he gave in charge to them, several acts of Congress for the punishment of offences, and among them, the

the abovementioned act, called the sedition law; and directed the said jury to make particular inquiry, concerning any breaches of these statutes or any of them, within the district of Virginia. On the 24th day of May, 1800, the said jury found an indictment against one James Thompson Callender, for printing and publishing against the form of the said act of Congress, a false, scandalous, and malicious libel, called "The Prospect before Us," against John Adams, then President of the United States, in his official character as President; as appears by an official copy of the said indictment, marked exhibit No. 4, which this respondent begs leave to make part of this his answer.

On Wednesday, the 28th of the same month, May, 1800, Philip Norbonne Nicholas, esq. now attorney general of the state of Virginia, and George Hay, esq. now district attorney of the United States, for the district of Virginia, appeared in the said circuit court as counsel for the said Callender; and on Tuesday the 3d of June following, his trial commenced, before this respondent, and the said Cyrus Griffin, who then sat as assistant judge. The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Austin, William Richardson, Thomas Tinsley, Matthew Harvey and John Bassett; who as they came to the book to be sworn, were severally asked on oath, by direction of the court, "whether they had ever formed and delivered any opinion respecting the subject matter then to be tried, or concerning the charges contained in the indictment?" They all answered in the negative, and were sworn in chief to try the issue: the counsel for the said Callender declaring, that it was unnecessary to put this question to the other four jurymen. William Mayo, James Hayes, Henry S. Shore and John Prior, they also were immediately sworn in chief. No challenge was made by the said Callender or his counsel, to any of these jurors; but the said counsel declared that they would rely on the answer that should be given by the said jurors, to the question thus put by order of the court.

After the abovementioned John Bassett, whom this respondent

respondent supposes and admits to be the person mentioned in the article of impeachment now under consideration, had thus answered in the negative, to the question put to him by order of the court, as abovementioned, which this respondent states to be the legal and proper question, to be put to jurors on such occasions, he expressed to the court, his wish to be excused from serving on the said trial, because he had made up his mind, or had formed his opinion, "that the publication, called 'The Prospect before Us,' from which the words charged in the indictment as libellous, were said to be extracted, but which he had never seen, was, according to the representation of it, which he had received, within the sedition law." But the court did not consider this declaration by the said John Bassett, as a sufficient reason for withdrawing him from the jury, and accordingly directed him to be sworn in chief.

In this opinion and decision, as in all the others delivered during the trial in question, this respondent concurred with his colleague, the aforementioned Cyrus Griffin, in whom none of these opinions have been considered as criminal. He contends that the opinion itself was legal and correct; and he denies that he concurred in it, under the influence of any "spirit of persecution and injustice," or with any "intent to oppress and procure the conviction of the prisoner;" as is most untruly alledged by the second article of impeachment. His reasons were correct and legal. He will submit them with confidence to this honorable court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honest error in judgment, and ought not to take on itself the power of inquiring into the correctness of his decisions, but merely that of examining the purity of his motives; will, nevertheless weigh his reasons, for the purpose of judging how far they are of sufficient force, to justify a belief that they might have appeared satisfactory to him. If they might have so appeared, if the opinion which he founded on them be not so palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

This

This honorable court need not be informed, that it is the duty of courts before which criminal trials take place, to prevent jurors from being excused for light and insufficient causes. If this rule were not observed, it would follow, that as serving on such trials as a juror, is apt to be a very disagreeable business, especially to those best qualified for it, there would be a great difficulty, and often an impossibility, in finding proper juries. The law has therefore established a fixed and general rule on this subject, calculated not to gratify the wishes or the unreasonable scruples of jurors, but to secure to the party accused, as far as in the imperfection of human nature it can be secured, a fair and impartial trial. The criterion established by this rule is, "that the juror stands indifferent between the government and the person accused, as to the matter *in issue*, on the indictment." This indifference is always, according to a well known maxim of law, to be presumed, unless the contrary appear; and the contrary may be alledged by way of excuse by the juror himself, or by the prisoner by way of challenge. Even if not alledged, it may be inquired into by the court of its own mere motion, or on the suggestion of the prisoner, and it may be established by the confession of the juror himself, on oath, or by other testimony.

But in order to shew that a juror does not "stand indifferent between the accuser and the accused, *as to the matter in issue*," it is not sufficient to prove that he has expressed a general opinion, "that such an offence as that charged by the indictment ought to be punished;" or "that the party accused, if guilty of the offence charged against him, ought to be punished;" or "that a book, for printing and publishing which the party is indicted, comes within the law on which the indictment is founded." All these are general expressions of opinion, as to the criminality of an act of which the party is accused, and of which he *may* be guilty; not declarations of an opinion that he actually is guilty of the offence with which he stands charged. It is impossible for any man in society to avoid having, and extremely difficult for him to avoid expressing, an opinion, as to the criminality

criminality or innocence of those acts, which for the most part, are the subjects of indictments for offences of a public nature; such as treason, sedition, and libels against the government. Such acts always engage public attention, and become the subject of public conversation; and if to have formed or expressed an opinion, as to the general nature of those acts, were a sufficient ground of challenge to a juror, when alledged against him, or of excuse from serving when alledged by himself, it would be in the power of almost every offender, to prevent a jury from being impannelled to try him, and of almost every man, to exempt himself from the unpleasant task of serving on such juries. The magnitude and heinous nature of an offence, would give it a greater tendency to attract public attention, and to draw forth public expressions of indignation; and would thus increase its chance of impunity.

To the present case this reasoning applies with peculiar force. The "Prospect before Us" is a libel so profligate and atrocious, that it excited disgust and indignation in every breast not wholly depraved. Even those whose interest it was intended to promote, were, as this respondent has understood and believes, either so much ashamed of it, or so apprehensive of its effects, that great pains were taken by them to withdraw it from public and general circulation. Of such a publication, it must have been extremely difficult to find a man of sufficient character and information to serve on a jury, who had not formed an opinion, either from his own knowledge, or from report. The juror in the present case had expressed no opinion. He had formed no opinion, as to the facts. He had never seen the "Prospect before Us," and therefore could have formed no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were such as reported, the book was within the scope and operation of a law for the punishment of "false, scandalous and malicious libels, against the President in his official capacity, written or published with intent to defame him." And who is there, that having either seen the book or heard of it, had not necessarily formed the same opinion?

But

But this juror had formed no opinion about the guilt or innocence of the party accused; which depended on four facts wholly distinct from the opinion which he had formed. First, whether the contents of the book were really such as had been represented to him? Secondly, whether they should, on the trial, be proved to be true? Thirdly, whether the party accused was really the author or publisher of this book? And fourthly, whether he wrote or published it “with intent to defame the President, or to bring him into contempt or disrepute, or to excite against him the hatred of the good people of the United States?” On all these questions, the mind of the juror was perfectly at large, notwithstanding the opinion which he had formed. He might, consistently with that opinion, determine them all in the negative; and it was on them that the issue between the United States and James Thompson Callender depended. Consequently, this juror, notwithstanding the opinion which he had thus formed, did stand indifferent as to the matter in issue, in the legal and proper sense, and in the only sense in which such indifference can ever exist; and therefore his having formed that opinion, was not such an excuse as could have justified the court in discharging him from the jury.

That this juror did not himself consider this opinion as an opinion respecting the “matter in issue,” appears clearly from this circumstance, that when called upon to answer on oath, “whether he had expressed any opinion as to the matter in issue?” he answered that he had not. Which clearly proves that he did not regard the circumstance of his having formed this opinion, as a legal excuse, which ought to exempt him of right from serving on the jury; but merely suggested it as a motive of delicacy, which induced him to wish to be excused. To such motives of delicacy, however commendable in the persons who feel them, it is impossible for courts of justice to yield, without putting it in the power of every man, under pretence of such scruples, to exempt himself from those duties which all the citizens are bound to perform. Courts of justice must regulate themselves by legal principles, which are fixed and universal;

verfal ; not by delicate scruples, which admit of endless variety, according to the varying opinions and feelings of men.

Such were the reasons of this respondent, and he presumes of his colleague the said Cyrus Griffin, for refusing to excuse the said John Bassett, from serving on the jury above mentioned. These reasons, and the decision founded on them, he insists were legal and valid. But if the reasons should be considered as invalid, and the decision as erroneous, can they be considered as so clearly and flagrantly incorrect, as to justify a conclusion that they were adopted by this respondent, through improper motives? Are not these reasons sufficiently strong, or sufficiently plausible, to justify a candid and liberal mind in believing, that a judge might honestly have regarded them as solid? Has it not been conceded, by the omission to prosecute judge Griffin for this decision, that his error, if he committed one, was an honest error? Whence this distinction between this respondent and his colleague? And why is that opinion imputed to one as a crime, which in the other is considered as innocent?

And the said Samuel Chase, for plea to the said second article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said second article is alledged against him; and this he prays may be inquired of by this honorable court, in such manner as law and justice shall seem to them to require.

The third article of impeachment alleges that this respondent “with intent to oppress and procure the conviction of the prisoner, did not permit the evidence of John Taylor, a material witness in behalf of the said Callender, to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges, contained in the indictment, although the said charge embraced more than one fact.”

In answer to this charge, this respondent begs leave to submit the following facts and observations:—

The indictment against James Thompson Callender, which has been already mentioned, and of which a copy is exhibited with this answer, consisted of two distinct
and

and separate counts, each of which contained twenty distinct and independent charges, or sets of words: Each of those sets of words was charged as a libel against John Adams, as President of the United States—and the 12th charge embraced the following words: “He (meaning President Adams) was a professed aristocrat; he proved faithful and serviceable to the British interest.” The defence set up was confined to this charge, and was rested upon the truth of the words. To the other nineteen charges, no defence of any kind was attempted or spoken of, except such as might arise from the supposed unconstitutionality of the sedition law; which, if solid, applied to the twelfth charge, as well as to the other nineteen. It was to prove the truth of these words, that John Taylor, the person mentioned in the article of impeachment now under consideration, was offered as a witness. It can hardly be necessary to remind this honorable court, that when an indictment for a libel contains several distinct charges, founded on distinct sets of words, the party accused, who in such cases is called the “traverser,” must be convicted, unless he makes a sufficient defence against every charge. His innocence on one, does not prove him innocent on the others. If the sedition law should be considered as unconstitutional, the whole indictment, including this twelfth charge, must fall to the ground, whether the words in question were proved to be true or not. If the law should be considered as constitutional, then the traverser, whether the words in the twelfth charge were proved to be true or not, must be convicted on the other nineteen charges, against which no defence was offered. This conviction on nineteen charges, would put the traverser as completely in the power of the court, by which the amount of the fine and the term of the imprisonment were to be fixed, as a conviction upon all the twenty charges. The imprisonment could not exceed two years, nor the fine be more than two thousand dollars. If then this respondent were desirous of procuring the conviction of the traverser, he was sure of his object, without rejecting the testimony of John Taylor. If his temper towards the traverser were so vindictive, as to make him feel anxious to obtain an opportunity and excuse for inflict-

ing on him the whole extent of punishment permitted by the law, still a conviction on nineteen charges afforded this opportunity and excuse, as fully as a conviction on twenty charges. One slander more or less, in such a publication as the "Prospect before Us," could surely be of no moment. To attain this object, therefore, it was not necessary to reject the testimony of John Taylor.

That the court did not feel this vindictive spirit, is clearly evinced by the moderation of the punishment which actually was inflicted on the traverser, after he was convicted of the whole twenty charges. Instead of 2000 dollars, he was fined only 200, and was sentenced to only nine months imprisonment, instead of two years. And this respondent avers, that he never felt or expressed a wish to go further ; but that in this decision, as well as in every other given in the course of the trial, he fully and freely concurred with his colleague, judge Griffin.

As a further proof that his rejection of this testimony did not proceed from any improper motive, but from a conviction in his mind that it was legally inadmissible, and that it was therefore his duty to reject it, he begs leave to state, that he interfered in order to prevail on the district attorney to withdraw his objection to those questions, and consent to their being put ; which that officer refused to do, on the ground "that he did not feel himself at liberty to consent to such a departure from legal principles."

Hence appears the utter futility of a charge, which attributes to this respondent a purpose as absurd as it was wicked ; and without the slightest proof, imputes to the worst motives in him the same action, which in his colleague is considered as free from blame. But this respondent will not content himself with shewing, that his conduct in concurring with his colleague in the rejection of John Taylor's testimony, could not have proceeded from the motives ascribed to him ; but he will show that this rejection, if not strictly legal and proper, as he believes and insists that it is, rests on legal reasons of sufficient force to satisfy every mind, that a judge might have sincerely considered it as correct.

The words stated as the ground of the twelfth charge above mentioned, are stated in the indictment as one entire

ture and indivisible paragraph, constituting one entire offence. This respondent considered them at the trial, and still considers them, as constituting one entire charge, and one entire offence ; and that they must be taken together in order to explain and support each other. It is clear that no words are indictable as libellous, except such as expressly, or by plain implication, charge the person against whom they are published, with some offence either legal or moral. To be an "aristocrat," is not in itself an offence, either legal or moral, even if it were a charge susceptible of proof ; neither was it an offence either legal or moral, for Mr. Adams to be "faithful and serviceable to the British interest," unless he thereby betrayed or endangered the interests of his own country ; which does not necessarily follow, and is not directly alledged in the publication. These two phrases, therefore, taken separately, charge Mr. Adams with no offence of any kind ; and, consequently, could not be indictable as libellous : but taken together, they convey the implication that Mr. Adams, being an "aristocrat," that is, an enemy to the republican government of his own country, had subverted the British interest, against the interest of his own country ; which would in his situation, have been an offence both moral and legal ; to charge him with it was, therefore, libellous.

Admitting, therefore these two phrases to constitute one distinct charge, and one entire offence, this respondent considers and states it to be law, that no justification which went to part only of the offence, could be received. The plea of justification must always answer the whole charge, or it is bad on the demurrer ; for this plain reason, that the object of the plea is to shew the party's innocence ; and he cannot be innocent, if the accusation against him be supported in part. Where the matter of defence may be given in evidence, without being formally pleaded, the same rules prevail. The defence must be of the same nature, and equally complete, in one case, as in the other. The only difference is in the manner of bringing it forward. Evidence, therefore, which goes only to justify the charge in part, cannot be received. It is not indeed necessary that the whole of this evidence should be given by one witness.

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The justification may consist of several facts, some of which may be proved by one person, and some by another. But proof, in such cases, must be offered as to the whole, or it cannot be received.

In the case under consideration, no proof was offered as to the whole matter contained in the twelfth article. No witness except the above mentioned John Taylor, was produced or mentioned. When a witness is offered to a court and jury, it is the right and duty of the court, to require a statement of the matters intended to be proved by him. This is the invariable practice of all our courts, and was done most properly by this respondent and his colleague, on the occasion in question. From the statement given by the traverser's counsel, of what they expected to prove by the said witness, it appeared that his testimony could have no possible application to any part of the indictment, except the twelfth charge above mentioned, and but a very weak and imperfect application even to that part. The court, therefore, as it was their right and duty, requested that the questions intended to be put to the witness, should be reduced to writing, and submitted to their inspection; so as to enable them to judge more accurately, how far those questions were proper and admissible. This being done, the questions were of the following tenor and effect:

1st. "Did you ever hear Mr. Adams express any sentiments favorable to monarchy, or 'aristocracy,' and what were they?"

2d. "Did you ever hear Mr. Adams while Vice President, express his disapprobation of the funding system?"

3d. "Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?"

The second question, it is manifest, had nothing to do with the twelfth charge; for Mr. Adams's approbation or disapprobation of the funding system, could not have the most remote tendency to prove that he was an aristocrat, or had proved faithful and serviceable to the British interest. In that part of the publication which
furnishes

furnishes the matter of the thirteenth charge in the indictment, it is indeed stated, that Mr. Adams, "when but in a secondary station, censured the funding system," but these words are in themselves wholly immaterial; and no attempt was made, nor any evidence offered or spoken of, to prove the truth of the other matter contained in the thirteenth charge. It was from their connection with that other matter, that these words could alone derive any importance; and consequently their truth or falsehood was altogether immaterial, while that other matter remained unproved. This question, therefore, which went solely to those immaterial words, was clearly inadmissible. The third question was, in reality, as far as the second from any connection with the matter in issue, although its irrelevancy is not quite so apparent. Mr. Adams's having voted against the two measures alluded to in that question, if he did in fact vote against them, could by no means prove that he was "faithful and serviceable to the British interest," in any sense, much less with those improper and criminal views, with which the publication in question certainly meant to charge him. He might, in the honest and prudent performance of his duty towards his government and his country, incidentally promote the interests of another country; but it was by no means competent for a jury to infer from thence, that he was "faithful" to that other country, or, in other words, that he held the interests of that other country chiefly in view, and was actuated in giving his vote by a desire to promote them, independently of, or without regard to the interests of his own country. Such an inference could not be made from the fact, admitting it to be true. The fact, if true, was *no* evidence to support such an inference, therefore the fact was immaterial; and as it is the province and duty of the court, in such circumstances, to decide on the materiality of facts offered in evidence, it follows clearly, that it was the right and duty of the court, in this instance, to reject the third question; an affirmative answer to which could have proved nothing in support of the defence.

The first question, therefore, and the only remaining one proposed to be put to this witness, stood alone;
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and an affirmative answer to it, if it could have proved any thing, could have proved only a part of the charge; viz. that Mr. Adams was an aristocrat: But evidence to prove a part only of an entire and indivisible charge, was inadmissible for the reasons stated above.

If, on the other hand, the phrases in question, "that Mr. Adams was an aristocrat," that "he had proved faithful and serviceable to the British interest," were distinct and divisible, and constituted two distinct charges, which may perhaps be the proper way of considering them, still the abovementioned questions were improper and inadmissible, in that point of view.

The first charge in that case is, that Mr. Adams "was an aristocrat." To be an aristocrat, even if any precise and definite meaning could be affixed to the term, is not an offence either legal or moral; consequently, to charge a man with being an aristocrat is not a libel; and such a charge in an indictment for a libel, is wholly immaterial. Nothing is more clear, than that immaterial matters in legal proceedings ought not to be proved, and need not be disproved. In the next place, the term "aristocrat" is one of those vague, indefinite terms, which admit not of precise meaning, and are not susceptible of proof. What one person might consider as aristocracy, another would consider as republicanism, and a third as democracy. If indictments could be supported on such grounds, the guilt or innocence of the party accused, must be measured not by any fixed or known rule, but by the opinions which the jurors appointed to try him might happen to entertain, concerning the nature of aristocracy, democracy or republicanism. And, lastly, the question itself was as vague, and as void of precise meaning, as the charge of which it was intended to furnish the proof. The witness was called upon to declare "whether he had heard Mr. Adams express any and what opinions, favorable to aristocracy or monarchy?" How was it to be determined, whether an opinion was favorable to aristocracy or monarchy? One man would think it favorable and another not so, according to the opinions which they might respectively entertain, on political subjects. The first question, therefore, was inconclusive, immaterial and inadmissible.

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The second, as has already been remarked, was wholly and manifestly foreign from the matter in issue. Mr. Adams's dislike of the funding system, if he did in fact dislike it, had nothing to do with his aristocracy or his faithfulness to the British interest. There is no pretence for saying, that such a question ought to have been admitted.

As to the third, "whether Mr. Adams had not voted against the sequestration of British property, and the suspension of commercial intercourse with Great Britain," it has already been shewn to be altogether improper; on the ground that such votes, if given by Mr. Adams, were no evidence whatever of his having been "faithful and serviceable to the British interest." If he had been so, provided it were in his opinion, at the same time useful to the interests of his own country, which it well might be, and the contrary of which is not alledged by this part of the publication, taken separately, it was no offence of any kind; and to charge him with it was not a libel. The charge was, therefore, immaterial and futile, and no evidence for or against it could properly be received. And, finally, if the charge had been material, and the giving of these votes had been legal evidence to prove it, that fact was on record in the journals of the Senate, and might have been proved by that record, or an official copy of it. As this evidence was the highest of which the case admitted, no inferior evidence of it, such as oral proof is well known to be, could be admitted.

For these reasons this respondent did concur with his colleague, the said Cyrus Griffin, in rejecting the three above mentioned questions; but not any other testimony that the said John Taylor might have been able to give. In this he insists that he acted legally and properly, according to the best of his ability. If he erred, it is impossible, for the reasons stated by him in the beginning of his answer to this article, to suppose that he erred wilfully; since he could have had no possible motive for a piece of misconduct so shameful, and at the same time so well calculated to give offence. In a point so liable to misapprehension and misrepresentation, and so likely to be used as a means of exciting public odium against him, it is far more probable, that had he been

been capable of bending his opinion of the law to other motives, he would have admitted illegal testimony ; which, taken in its utmost effect, could have had no tendency to thwart those plans of vengeance against the traverser, under the influence of which he is supposed to have acted.

If his error was an honest one, which as his colleague also fell into it, might in charity be supposed ; and, as there is not a shadow of evidence to the contrary, must in law be presumed ; he cannot, for committing it, be convicted of any offence, much less a high crime and misdemeanor, for which he must on conviction be deprived of his office.

And for plea to the said third article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said third article is alledged against him : and this he prays may be inquired of by this honorable court, in such manner as law and justice shall seem to them to require.

The fourth article of impeachment alledges, that during the whole course of the trial of James Thompson Callender, above mentioned, the conduct of this respondent was marked by “ manifest injustice, partiality, and intemperance ; ” and five particular instances of the “ injustice, partiality and intemperance ” are adduced.

The first consists, “ in compelling the prisoner’s counsel to reduce to writing and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the abovementioned John Taylor, the witness.”

This respondent, in answer to this part of the article now under consideration, admits that the court, consisting of himself and the abovementioned Cyrus Griffin, did require the counsel for the traverser, on the trial of James Thompson Callender abovementioned, to reduce to writing the questions which they intended to put to the said witness. But he denies that it is more his act than the act of his colleague, who fully concurred in this measure. The measure, as he apprehends and insists, was strictly legal and proper ; his reasons for adopting it, and he presumes those of his colleague, he will submit to this honorable court, in order to shew
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that if he, in common with his colleague, committed an error, it was an error into which the best and wisest men might have honestly fallen:

It will not be denied, and cannot be doubted, that according to our laws, evidence, whether oral or written, may be rejected and prevented from going before the jury, on various grounds.—1st. For incompetency: where the source from which the evidence is attempted to be drawn, is an improper source: as if a witness were to be called who was infamous, or interested in the event of the suit; or a paper should be offered in evidence, which was not between the same parties, or was not executed in the forms prescribed by law. 2d. For irrelevancy: when the evidence offered is not such, as in law will warrant the jury to infer the fact intended to be proved; or where that fact, if proved is immaterial to the issue. For these reasons, and perhaps for others which might be specified, evidence may properly be rejected, in trials before our courts.

As little can it be doubted, that according to our laws, the court, and not the jury, is the proper tribunal for deciding all questions relative to the admissibility of evidence. The effect of the evidence when received, is to be judged of by the jury; but whether it ought to be received, must be determined by the court. This arises from the very constitution of the trial by jury; one fundamental principle of which is, that the jury must decide the case, not according to vague notions, secret impressions or general belief, but according to legal and proper evidence, delivered in court. So strictly is this rule observed, that if one juror have any knowledge of the matter in dispute, it may influence his own judgment, but not that of his fellow jurors, unless he state it to them on oath in open court; and nothing is more common than for our courts, after all the evidence which the party can produce has been offered and received, to tell the jury that there is no evidence to support the claim, or the defence; or when proof is offered of a certain fact, to determine that such fact is not proper to be given in evidence.

Hence it results, and is every day's practice, that when a witness is produced, or a writing is offered in
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evidence, the opposite party having a right to object to the evidence if he should think it improper, requires to be informed what the witness is to prove, or to see the writing, before the first is examined, or the second is read to the jury. The court has the same right, resulting necessarily from its power to decide all questions relative to the admissibility of evidence. This right our courts are in the constant habit of exercising; not only when objections are made by the parties, but when there being no objection, the court itself has reason to suspect that the testimony is improper. In most cases; but not in all, consent by the opposite party removes all objections to the admissibility of evidence, and courts sometimes infer consent from silence; but as it is their duty to take care, that no improper or illegal evidence goes to the jury, unless the objection to it be removed by consent of parties; it is consequently their duty, in all cases where they see reason to suspect that the evidence offered is improper, to ascertain whether consent has been given, or whether the seeming acquiescence of the opposite party has proceeded from inattention. This is more particularly their duty in *criminal* cases, where they are bound to be counsel for the government, as well as for the party accused.

It being thus the right and duty of a court before which a trial takes place, to inform itself of the nature of the evidence offered, so as to be able to judge whether such evidence be proper, it results necessarily that they have a right to require, that any question intended to be put to a witness, should be reduced to writing, for that is the form in which their deliberation upon it may be most perfect, and their judgment will be most likely to be correct. In the case now under consideration, the court did exercise this right. When the testimony of John Taylor was offered, the court inquired of the traverser's counsel, what that witness was to prove. The statement of his testimony given in answer, induced the court to suspect that it was irrelevant and inadmissible. They, therefore, that they might have an opportunity for more careful and accurate consideration, called upon the counsel to state in writing, the questions intended to be put to the witness.

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This is the act done by the court, but concurred in by the respondent, which has been selected and adduced, as one of the proofs and instances of "manifest injustice, partiality and intemperance" on his part. He owes an apology to this honorable court, for having occupied so much of its time with the refutation of a charge which has no claim to serious consideration, except what it derives from the respect due to the honorable body by which it was made, and the high character of the court where it is preferred.

The next circumstance stated by the article now under consideration, as an instance and proof of "manifest injustice, partiality and intemperance" in this respondent, is his refusal to postpone the trial of the said James Thompson Callender, "altho' an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused, and altho' it was manifest that with the utmost diligence the attendance of such witnesses could not have been procured at that term."

This respondent, in answer to this part of the charge, admits, that in the above mentioned trial the traverser's counsel did move the court, while this respondent sat in it alone, for a continuance of the case until the next term; not merely a postponement of the trial, as the expressions used in this part of the article would seem to import; and did file, as the ground work of their motion, an affidavit of the traverser, a true and official copy of which, marked exhibit No. 5, this respondent herewith exhibits, and begs leave to make part of this answer; but he denies that any sufficient ground for a continuance until the next term was disclosed by this affidavit, as he trusts will clearly appear from the following facts and observations.

The trial of an indictment at the term when it is found by the grand jury, is a matter of course, which the prosecutor can claim as a right, unless legal cause can be shewn for a continuance. The prosecutor may consent to a continuance; but if he withholds his consent, the court cannot grant a continuance without legal cause. Of the sufficiency and legality of this cause, as of every other question of law, the court must judge; but it must decide on this, as on every other point, according to the fixed and known rules of law.

One of the legal grounds, and the principal one on which such a continuance may be granted, is the absence of competent and *material* witnesses, whom the party cannot produce at the present term, but has a *reasonable ground* for expecting to be able to produce at the next term. Analogous to this, is the inability to procure at the present term, legal and *material* written testimony, which the party has a *reasonable expectation* of being able to procure at the next term.

These rules are as reasonable and just in themselves, as they are essential to the due administration of justice, to the punishment of offences on the one hand, and to the protection of innocence on the other. If the continuance of a cause, on the application of the party accused, were a matter of right, it is manifest that no indictment would be brought to trial until after a delay of many months. If, on the other hand, the granting of a continuance depended not on fixed rules, but on the arbitrary will of the court, it would follow that weakness or partiality might induce a court on some occasions, to extend a very improper indulgence to the party accused; while on others, passion or prejudice might deprive him of the necessary means of making his defence. Hence the necessity of fixed rules, which the judges are bound to expound and apply, under the solemn sanction of their oath of office.

The true and only reason for granting a continuance, is that the party accused may have the best opportunity that the laws can afford to him, to make his defence. But incompetent or immaterial witnesses, could not be examined if they were present; and consequently their absence can deprive the party of no opportunity which the laws afford to him of making his defence. Hence the rule, that the witnesses must be competent and material.

Public justice will not permit the trial of offenders to be delayed, on light or unfounded pretences. To wait for testimony which the party really wished for, but did not expect to be able to produce within some definite period, would certainly be a very light pretence; and to make him the judge, how far there was reasonable expectation of obtaining the testimony within the proper time, would put it in his power to delay the trial, on the
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most unfounded pretences. Hence the rule, that there must be reasonable ground of expectation in the judgment of the court, that the testimony may be obtained within the proper time.

It is therefore a settled and most necessary rule, that every application for a continuance, on the ground of obtaining testimony, must be supported by an affidavit, disclosing sufficient matter to satisfy the court, that the testimony wanted "is competent and material," and that there is "reasonable expectation of procuring it within the time prescribed." From a comparison of the affidavit in question with the indictment, it will soon appear how far the traverser in this case, brought himself within this rule.

The absent witnesses mentioned in the affidavit, are William Gardner, of Portsmouth, in New Hampshire; Tench Coxe, of Philadelphia, in Pennsylvania; Judge Bee, of some place in South Carolina; Timothy Pickering, lately of Philadelphia, in Pennsylvania, but of what place at that time, the deponent did not know; William B. Giles, of Amelia county, in the state of Virginia; Stephens Thompson Mason, whose place of residence is not mentioned in the affidavit, but was known to be in Loudon county, in the state of Virginia; and general Blackburn, of Bath county, in the said state. The affidavit also states, that the traverser wished to procure, as material to his defence, authentic copies of certain answers made by the President of the United States, Mr. Adams, to addresses from various persons; and also, a book entitled "an Essay on Canon and Feudal Law," or entitled in words *to that purport*, which was ascribed to the President, and which the traverser believed to have been written by him; and also, evidence to prove that the President was in fact, the author of that book.

It is not stated, that the traverser had any reasonable ground to expect, or did expect, to procure this book or evidence, or these authentic copies, or the attendance of any one of these witnesses, at the *next* term. Nor does he attempt to shew in what manner the book, or the copies of answers to addresses, were material, so as to enable the court to form a judgment on that point. Here then, the affidavit was clearly defective. His be-
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believing the book and copies to be material, was of no weight, unless he shewed to the court, sufficient grounds for entertaining the same opinion. Moreover he does not state, where he supposes that this book, and those authentic copies, may be found : so as to enable the court to judge, how far a reasonable expectation of obtaining them, might be entertained. On the ground of this book and these copies, therefore, there was no pretence for a continuance. As to the witnesses, it is manifest, that, from their very distant and dispersed situation, there existed no ground of reasonable expectation, that their attendance could be procured at the *next* term, or at any subsequent time. Indeed, the idea of postponing the trial of an indictment, till witnesses could be convened at Richmond, from South Carolina, New Hampshire, and the western extremities of Virginia, is too chimerical to be seriously entertained. Accordingly, the traverser, though in his affidavit he stated them to be material, and declared that he could not procure their attendance at that term, could not venture to declare on oath, that he expected to procure it at the next, or at any other time ; much less that he had any reasonable ground for such expectation. On this ground, therefore, the affidavit was clearly insufficient ; and it was consequently the duty of the court to reject such application.

But the testimony of these witnesses, as stated in the affidavit, was wholly immaterial ; and therefore, their absence was no ground for a continuance, had there been reasonable ground for expecting their attendance at the next term.

William Gardner and Tench Coxe, were to prove that Mr. Adams had turned them out of office, for their political opinions or conduct. This applied to that part of the publication, which constituted the matter of the third charge in the indictment, in these words, "the same system of persecution extended all over the continent. Every person holding an office, must either quit it, or think and vote exactly with Mr. Adams."—Judge Bee was to prove, that Mr. Adams had advised and requested him by letter, in the year 1799, to deliver Thomas Nash, otherwise called Jonathan Robbins, to the British consul in Charleston. This might have had some application

application to the matter of the seventh charge ; which alledged that “ the hands of Mr. Adams were reeking with the blood of the poor, friendless, Connecticut sailor.” Timothy Pickering was to prove, that Mr. Adams, while President, and while Congress was in session, was many weeks in possession of important dispatches, from the American minister in France, without communicating them to Congress. This testimony was utterly immaterial ; because, admitting the fact to be so, Mr. Adams was not bound, in any respect, to communicate those dispatches to Congress, unless in his discretion, he should think it necessary ; and also, because the fact, if true, had no relation to any part of the indictment. There are, indeed, three charges, on which it might at first sight seem to have some slight bearing. These are the eighth, the words furnishing the matter of which are, “ every feature in the administration of Mr. Adams, forms a distinct and additional evidence, that he was determined at all events, to embroil this country with France ;” the fourteenth, the words stated in which alledge, that “ by sending these ambassadors to Paris, Mr. Adams and his British faction, designed to do nothing but mischief ;” and the eighteenth, the matter of which states, “ that in the midst of such a scene of profligacy and usury, the President persisted as long as he durst, in making his utmost efforts, for provoking a French war.” To no other charge in the indictment, had the evidence of Timothy Pickering, as stated in the affidavit, the remotest affinity. And surely, it will not be pretended by any man, who shall compare this evidence, with the three charges above mentioned, that the fact intended to be proved by it, furnished any evidence proper to go to a jury, in support of either of those charges, that “ every feature of his administration, formed a distinct and additional evidence, of a determination at all events, to embroil this country with France,” that “ in sending ambassadors to Paris, he intended nothing but mischief,” that “ in the midst of a scene of profligacy and usury, he persisted, as long as he durst, in making his utmost efforts for provoking a French war.” These are charges, which surely cannot be supported or justified, by the circumstance of his “ keeping in his possession, for several weeks, while Congress

gress was in session, dispatches from the American minister in France, without communicating them to Congress,' which he was not bound to do, and which it was his duty not to do, if he supposed, that the communication, at an earlier period, would be injurious to the public interest. The testimony of William B. Giles and Stephens Thompson Mason, was to prove, that Mr. Adams had uttered in their hearing, certain sentiments, favourable to aristocratic or monarchical principles of government.

This had no application except to a part of the twelfth charge ; which has been already shewn to be wholly immaterial if taken separately, and wholly incapable of a separate justification, if considered as part of an entire charge. And, lastly, it was to be proved by general Blackburn, that in his answer to an address, Mr. Adams avowed, " that there was a party in Virginia, which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted and offended country." There were but two charges in the indictment to which this fact, if true, had the most distant resemblance. These are the fifteenth and sixteenth, the words forming the matter of which, call Mr. Adams " an hoary-headed libeller of the governor of Virginia, who with all the fury, but without the propriety or sublimity of Homer's Achilles, bawled out, to arms then, to arms !" and " who floating on the bladder of popularity, threatened to make Richmond the centre point of a bonfire." It would be an abuse of the patience of this honorable court, to occupy any part of its time in proving, that the fact intended to be proved by general Blackburn, could not in the slightest degree support or justify such charges as these. This is the account given of the testimony of the absent witnesses, by the affidavit filed as the ground of the motion for a continuance. From a comparison of it with the indictment, it will appear, that out of twenty charges in the indictment, there were but eight, to which any part of the testimony of these witnesses had the most distant allusion ; and that of those eight charges there are five, which the testimony, having some allusions to them, could not in the slightest degree support. Twelve charges therefore, remained without even

even an attempt to justify them; and seventeen were wholly destitute of any legal or sufficient justification. On these seventeen charges, therefore, the traverser must have been convicted, even if the remaining three had been completely justified by the testimony of the absent witnesses. The conviction on these seventeen charges, or even on one of them, would have put it into the power of the court to fine and imprison the traverser, to the whole extent allowed by the law. If the truth of these three charges, admitting it to be established, could have any effect in mitigating the punishment, which depended on the court and not on the jury, the court in passing sentence might make, and in this case, actually did make, the fullest abatement on that account that the testimony if adduced would warrant.

This testimony, therefore, was in every view immaterial; and had it been material, there existed no ground of reasonable expectation, that it could be obtained at the next term, or any future term. For these reasons, and not from those criminal motives, which without the least shadow of proof are ascribed to him, this respondent did overrule and reject the motion for a continuance till the next term: as it was his duty to do, since he had no discretion in the case, but was bound by the rules of law.

But in order to afford every accommodation to the traverser and his counsel, which it was in his power to give, this respondent did offer to postpone the trial for a month or more, in order to afford them full time for preparation, and for procuring such testimony as was within their reach. This indulgence they thought proper to refuse.

On Monday, the second, and Tuesday, the third day of June, 1800, when judge Griffin had taken his seat in court, and was on the bench, the counsel for the traverser, renewed their motion for a continuance, founded on the same affidavit; and after a full hearing and consideration of the argument, the court, judge Griffin concurring, overruled the motion, and ordered the trial to proceed.

If this decision be correct, as he believes and insists that it is, no offence could be committed by him in mak-

ing or concurring in it. It was a proper and legal performance of his duty as a judge. If it be erroneous, still the error, if an honest one, cannot be an offence, much less a high crime and misdemeanor; and as in his colleague it has been considered as an honest error, he confidently trusts it will be considered so in him also.

To the third charge adduced in support of the article now under consideration, the charge of using "unusual, rude, and contemptuous expressions, towards the prisoner's counsel," and of "falsely insinuating, that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of this respondent did manifestly tend," he cannot answer otherwise than by a general denial. A charge so vague, admits not of precise or particular refutation. He denies that there was any thing unusual or intentionally rude or contemptuous in his conduct or his expressions towards the prisoner's counsel; that he made any false insinuation whatever against them, or that his own conduct tended in any manner to produce insubordination to law. On the contrary, it was his wish and intention, to treat the counsel with the respect due to their situation and functions, and with the decorum due to his own character. He thought it his duty to restrain such of their attempts as he considered improper, and to overrule motions made by them, which he considered as unfounded in law; but this it was his wish to accomplish in the manner least likely to offend, from which every consideration concurred in dissuading him. He did indeed think at that time, and still remains under the impression, that the conduct of the traverser's counsel, whether from intention or not he will not undertake to say, was disrespectful, irritating, and highly incorrect. That conduct which he viewed in this light, might have produced some irritation in a temper naturally quick and warm, and that this irritation might notwithstanding his endeavours to suppress it, have appeared in his manner and in his expressions, he thinks not improbable; for he has had occasions of feeling and lamenting the want of sufficient caution and self-command, in things of this nature. But he confidently affirms, that his conduct in this particular was free from intentional

intentional impropriety ; and this respondent denies, that any part of his conduct was such as ought to have induced the traverser's counsel to "abandon the cause of their client," nor does he believe that any such cause did induce them to take that step. On the contrary, he believes that it was taken by them under the influence of passion or for some motive into which this respondent forbears at this time to inquire. And this respondent admits, that the said traverser was convicted and condemned to fine and imprisonment, but not by reason of the abandonment of his defence by his counsel ; but because the charges against him were clearly proved, and no defence was made or attempted against far the greater number of them.

The fourth charge in support of this article, attributes to this respondent, "repeated and vexatious interruptions of the said counsel, which at length induced them to abandon the cause of their client, who was therefore convicted, and condemned to fine and imprisonment." To this charge also, it is impossible to give any other answer but a general denial. He avers that he never interrupted the traverser's counsel vexatiously, or except when he considered it his duty to do so. It cannot be denied that courts have power to interrupt counsel when in their opinion the correctness of proceeding requires it. In this, as in every thing else, they may err. They may sometimes act under the influence of momentary passion or irritation, to which they in common with other men, are liable. But unless their conduct in such cases, though improper or ill-judged, be clearly shewn to proceed, not from human infirmity, but from improper motives, it cannot be imputed to them as an offence, much less as a crime or misdemeanor.

Lastly, this respondent is charged under this article, with an "indecent sollicitude, manifested by him, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice." This is another charge of which it is impossible to give a precise refutation, and to a general denial of which, this respondent must therefore confine himself. He denies that he felt any sollicitude whatever for the conviction of the traverser ; other than the

the general wish natural to every friend of truth, decorum, and virtue, that persons guilty of such offences, as that of which the traverser stood indicted, should be brought to punishment, for the sake of example. He has no hesitation to acknowledge, that his indignation was strongly excited, by the atrocious and profligate libel which the traverser was charged with having written and published. This indignation, he believes, was felt by every virtuous and honorable man in the community, of every party, who had read the book in question, or become acquainted with its contents. How properly it was felt, will appear from the book itself, which this respondent has ready to produce to this honorable court; from the parts of it incorporated into the indictment now under consideration; and some further extracts contained in the paper marked exhibit No. 6, which this respondent prays leave to make part of this his answer. He admits, and it can never be to him a subject of self-reproach or a cause of regret, that he partook largely in this general indignation, but he denies that it in any manner influenced his conduct towards the traverser, which was regulated by a conscientious regard to his duty and the laws. He moreover contends, that a solicitude to procure the conviction of the traverser, however unbecoming his character as a judge, would not have been an offence, had he felt it; unless it had given rise to some misconduct on his part. Intentions and feelings, unless accompanied by actions, do not constitute crimes in this country; where the guilt or innocence of men is not judged of by their wishes and solitudes, but by their conduct and its motives. And this respondent thinks it his duty, on this occasion, to enter his solemn protest against the introduction in this country, of those arbitrary principles, at once the offspring and the instruments of despotism, which would make "high crimes and misdemeanors" to consist in "rude and contemptuous expressions," in "vexatious interruptions of counsel," and in the manifestation of "indecent solicitude" for the conviction of a most notorious offender. Such conduct is, no doubt, improper and unbecoming in any person, and much more so in a judge: but it is too vague, too uncertain, and too susceptible of forced interpretations,

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according to the impulse of passion or the views of policy, to be admitted into the class of punishable offences, under a system of law whose certainty and precision in the definition of crimes, is its greatest glory, and the greatest privilege of those who live under its sway.

In concluding his defence against those charges contained in the fourth article of impeachment, he declares, that his whole conduct in that trial, was regulated by a strict regard to the principles of law, and by an honest desire to do justice between the United States and the party accused. He felt a sincere wish, on the one hand, that the traverser might establish his innocence, by those fair and sufficient means which the law allows; and a determination, on the other, that he should not, by subterfuges and frivolous pretences, sport with the justice of the country, and evade that punishment of which, if guilty, he was so proper an object. These intentions he is confident, were legal and laudable; and if, in any part of his conduct, he swerved from this line, it was an error of his judgment and not of his heart.

And the said respondent for plea to the said fourth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fourth article is alledged against him, and this he prays, may be inquired of by this honorable court, in such manner as law and justice shall seem to require.

The fifth article of impeachment charges this respondent, with having awarded "a *capias* against the body of the said James Thompson Callender, indicted for an offence *not capital*, whereupon the said Callender was arrested and committed to *close* custody, contrary to law in that case made and provided."

This charge is rested, 1st, on the act of Congress of September 24th, 1789, entitled, "an act to establish the judicial courts of the United States," by which it is enacted "that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process, in the state where such offender may be found." And 2dly, on a law of the state of Virginia, which is said to provide "that upon *presentment* by any grand jury, of an offence *not capital*, the court shall order the clerk to issue

a *summons* against the person or persons so offending, to appear and answer such presentment at the *next* court." It is contended, in support of this charge, that the act of Congress above mentioned, made the state law the rule of proceeding, and that the state law was violated by issuing a *capias* against Callender, instead of a *summons*.

The first observation to be made on this part of the case is, that the date of the law of Virginia is not mentioned in the article. A very material omission! For it cannot be contended, that by the act of Congress in question, which was passed for establishing the laws of the United States, and regulating their proceedings; it was intended to render those proceedings dependent on all *future* acts of the state legislatures. The intention certainly was, to adopt, to a certain limited extent, the regulations existing in the states at the time of passing the act. Consequently, a law of Virginia, passed after this act, can have no operation on the proceedings under it. But by referring to the law of Virginia in question, it will be found to bear date on November 13th, 1792, more than three years after this act of Congress, by which it is said to have been adopted. But the omission of the date of this law of Virginia, is not the most material oversight which has been made in citing it. Its title is "An act directing the method of proceeding against free persons, charged with certain crimes," &c. and it enacts, section 28th, "That upon presentment made by the grand jury, of an offence not capital, the court shall order the clerk to issue a *summons*, or *other proper process*, against the person or persons so presented, to appear and answer at the next court." It will be observed that these words, "or other proper process," which leave it perfectly in the discretion of the court what process shall issue, provided it be such as is proper for bringing the offender to answer to the presentment, are omitted in this article of impeachment.

From these words it is perfectly manifest, that the law of Virginia, admitting it to apply, did not order a *summons* to be issued, but left it perfectly in the discretion of the court to issue a *summons*, or such other process as they should judge proper. It is therefore, a sufficient

ficient answer to this article to say, that this respondent considered a *capias* as the proper process, and therefore ordered it to issue; which he admits that he did, immediately after the presentment was found against the said Callender, by the grand jury.

This he is informed and expects to prove, has been the construction of this law by the courts of Virginia, and their general practice. Indeed it would be most strange, if any other construction or practice had been adopted. There are many offences not capital, which are of a very dangerous tendency, and on which very severe punishment is inflicted by the laws of Virginia; and to enact by law that in all such cases, however notorious or profligate the offenders might be, the courts should be obliged, after a presentment by a grand jury, to proceed against them by summons; would be to enact, that as soon as their guilt was rendered extremely probable, by the presentment of a grand jury, they should receive regular notice, to escape from punishment by flight or concealment.

It will also appear, as this respondent believes, by a reference to the laws and practice of Virginia, into which he has made all the inquiries which circumstances and the shortness of time allowed him for preparing his answer, would permit, that all the cases in which a summons is considered as the only proper process, are cases of petty offences, which on the presentment of a grand jury, are to be tried by the court in a summary way, without the intervention of a petit jury.—Therefore, these provisions had no application to the case of Callender, which could be no otherwise proceeded on than by indictment, and trial on the indictment by a petit jury.

It must be recollected that the act of Congress of September 24th, 1789, enacts, section 14, “that the courts of the United States, shall have power to issue writs of *scire facias*, *habeas corpus*, and *all other writs* not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of laws.” Consequently, the circuit court, where the proceedings in question took place, had power to issue a *capias* against the

the traverser, on the presentment, unless the state law above mentioned governed the case, and contained something to restrain the issuing of that writ in such a case. This respondent contends, for the reasons above stated, that this state law neither applied to the case, nor contained any thing to prevent the issuing of a *capias*, if it had applied.

Thus it appears that this respondent, in ordering a *capias* to issue against Callender, decided correctly, as it certainly was his intention to do. But he claims no other merit than that of upright intention in this decision : for when he made the decision, he was utterly ignorant that such a law existed in Virginia ; and declares that he never heard of it, till this article was reported by a committee of the House of Representatives, during the present session of Congress. This law was not mentioned on the trial either by the counsel or the traverser, or by judge Griffin, who certainly had much better opportunities of knowing it than this respondent, and who, no doubt, would have cited it had they known it and considered it as applicable to the case. This respondent well knows that in a criminal view, ignorance of the law excuses no man in offending against it ; but this maxim applies not to the decision of a judge ; in whom ignorance of the law in general would certainly be a disqualification for this office, though not a crime ; but ignorance of a particular act of assembly, of a state where he was an utter stranger, must be considered as a very pardonable error ; especially as the counsel for the prisoner to whose case that law is supposed to have applied, forbore or omitted to cite it ; and as a judge of the state, always resident in it, and long conversant with its local laws, either forgot this law, or considered it as inapplicable.

Such is the answer, which this respondent makes to the fifth article of impeachment. If he erred in this case, it was through ignorance of the law ; and surely, ignorance under such circumstances, cannot be a crime, much less a high crime and misdemeanor, for which he ought to be removed from his office. If a judge were impeachable for acting against law from ignorance only, it would follow, that he would be punished in the same manner
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for deciding against law wilfully, and for deciding against it through mistake. In other words, there would be no distinction between ignorance and design, between error and corruption.

And the said respondent, for plea to the said fifth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fifth article is alledged against him; and this he prays, may be inquired of, by this honorable court, in such manner, as law and justice shall seem to them to require.

The sixth article of impeachment alledges, that this respondent, "with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he the said Callender was presented and indicted, contrary to the law in that case made and provided."

This charge also, is founded, 1st, on the act of Congress of September 24th, 1789, above mentioned, which enacts, section 34, "that the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise provide, shall be regarded as the rules of decision, in trials at *common law*, in the courts of the United States, in cases where they apply;" and 2dly, on a law of the state of Virginia, which is supposed to provide, "that in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next succeeding that, during which such presentment shall have been made." This law, it is contended, is made the rule of decision by the above mentioned act of Congress, and was violated by the refusal to continue the case of Callender till the next term.

In answer to this charge this respondent declares, that he was at the time of making the above mentioned decision, wholly ignorant of any such law of Virginia as that in question; that no such law was adduced or mentioned by the counsel of Callender, in support of their motion for a continuance, neither when they first made it, before this respondent sitting alone, nor when they renewed it, after Judge Griffin had taken his seat in court: that no such law was mentioned by Judge Griffin; who concurred in overruling the motion for a con-

tinuance, and ordering on the trial ; which he could not have done had he known that such a law existed, or considered it as applicable to the case ; and that this respondent never heard of any such law, until the articles of impeachment now under consideration were reported, in the course of the present session of Congress, by a committee of the House of Representatives.

A judge is certainly bound to use all proper and reasonable means of obtaining a knowledge of the laws which he is appointed to administer ; but after the use of such means, to overlook, misunderstand, or remain ignorant of some particular law, is at all times a very pardonable error. It is much more so in the case of a judge of the supreme court of the United States, holding a circuit court in a particular state, with which he is a stranger, and with the local laws of which he can have enjoyed but very imperfect opportunities of becoming acquainted. It was foreseen by Congress, in establishing the circuit courts of the United States, that difficulties and inconveniences must frequently arise from this source, and to obviate such difficulties it was provided, that the district judge of each state, who having been a resident of the state and a practitioner in its courts, had all the necessary means of becoming acquainted with its local laws, should form a part of the circuit court in his own state. The judge of the supreme court is expected, with reason, to be well versed in the general laws ; but the local laws of the state form the peculiar province of the district judge, who may be justly considered as particularly responsible for their due observance. If in the case in question, this respondent overlooked or misconstrued any local law of the state of Virginia, which ought to have governed the case, it was equally overlooked and misunderstood, not only by the prisoner's counsel who made the motion, and whose peculiar duty it was to know the law and bring it into the view of the court, but also by the district judge, who had the best opportunities of knowing and understanding it, and in whom, nevertheless, this oversight or mistake is considered as a venial error, while in this respondent it is made the ground of a criminal charge.

This respondent further states, that after the most diligent

diligent and the most extensive inquiry which the time allowed for preparing this answer would permit, he can find no law of Virginia which expressly enacts, that "in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next succeeding that during which such presentment shall have been made." This principle he supposes to be an inference drawn by the authors of the articles of impeachment, from the law of Virginia mentioned in the answer to the preceding article, the law of November 15th, 1792, which provides "that upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons, or other proper process, against the person or persons so presented, to appear and answer such presentment at the NEXT court." This law he conceives does not warrant the inference so drawn from it, because it speaks of *presentments* and not of *indictments*, which are very different things; and is, as he is informed, confined by practice and construction in the state of Virginia, to cases of small offences, which are to be tried by the court itself upon the presentment, without an indictment or the intervention of a petit jury. But for cases, like that of Callender, where an indictment must follow the presentment, this law made no provision. Further, the state laws are directed by the abovementioned act of Congress, to be the rule of decision in the courts of the United States, only "in cases where they apply." Whether they apply or not to a particular case, is a question of law, to be decided by the court where such case is pending, and an error in making the decision is not a crime, nor even an offence, unless it can be shewn to have proceeded from improper motives. This respondent is of opinion, that the law in question did not apply to the case of Callender, for the reasons stated above; and therefore that it would have been his duty to disregard it, even had it been made known to him by the counsel for the traverser.

And in the last place he contends, that the law of Virginia in question, is not adopted by the abovementioned act of Congress as the rule of decision, in such cases as that now under consideration. That act does indeed provide, "that the laws of the several states, except

cept where the constitution, treaties or statutes of the United States shall otherwise provide, shall be regarded as rules of decision in trials at *common law*, in the courts of the United States, in cases where they apply." But this provision, in his opinion, can relate only to rights acquired under the state laws, which come into question on the trial; and not to forms of process or modes of proceeding, anterior or preparatory to the trial. Nor can it, as this respondent apprehends, have any application to indictments for offences against the statutes of the United States, which cannot with any propriety be called "trials at common law." It relates merely, in his opinion, to civil rights acquired under the state laws; which by virtue of this provision are, when they come in question in the courts of the United States, to be governed by the laws under which they accrued.

If in these opinions this respondent be incorrect, it is an honest error: and he contends that neither such an error in the construction of a law, nor his ignorance of a local state law which he had no opportunity of knowing, and of which the counsel for the party whose case it is supposed to have affected were equally ignorant, can be considered as an offence liable to impeachment, or to any sort of punishment or blame.

And for plea to the said sixth article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor as in and by the said article is alledged against him; and this he prays may be inquired of by this honorable court in such manner as law and justice shall seem to them to require.

The seventh article of impeachment relates to some conduct of this respondent in his judicial capacity, at a circuit court of the United States held at Newcastle in the state of Delaware, in June 1800. The statement of this conduct made in the article is altogether erroneous; but if it were true, this respondent denies, that it contains any matter for which he is liable to impeachment. It alleges that "disregarding the duties of his office, he did descend from the dignity of a judge, and stoop to the level of an informer." This high offence consisted, according to the article, 1st, in refusing to discharge the grand jury, although entreated by several of the said jury to

to do so ;” 2dly, in “ observing to the said grand jury, after the said grand jury had regularly declared through their foreman, that they had found no bills of indictment, and had no presentments to make, that he the said Samuel Chase understood ‘ that a highly seditious temper had manifested itself in the state of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order ; that the name of this printer was _____” 3dly, “ in then checking himself as if sensible of the indecorum which he was committing ;” 4thly, in adding “ that it might be assuming too much, to mention the name of this person ; but it becomes your duty, gentlemen, to inquire diligently into this matter,” or words to that effect.” And 5thly, in authoritatively enjoining on the district attorney of the United States, with intention to procure the prosecution of the printer in question, the necessity of procuring a file of the papers to which he alluded, and by a strict examination of them to find some passage, which might furnish the ground work of a prosecution against the printer.”

These charges amount in substance to this ; that the respondent refused to discharge a grand jury on their request, which is every day’s practice, and which he was bound to do, if he believed that the due administration of justice required their longer attendance : that he directed the attention of the grand jury to an offence against a statute of the United States, which he had been informed was committed in the District ; and that he desired the district attorney to aid the grand jury, in their inquiries concerning the existence and nature of this offence. By these three acts, each of which it was his duty to perform, he is alledged “ to have degraded his high judicial functions, and tended to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.”

That this honorable court may be able to form correctly its judgment, concerning the transaction mentioned in this article, this respondent submits the following statement of it, which he avers to be true, and expects to prove.

On

On the 27th day of June, 1800, this respondent, as one of the associate justices of the supreme court of the United States, presided in the circuit court of the United States, then held at Newcastle in and for the district of Delaware, and was assisted by Gunning Bedford, Esq. then district judge of the United States for that district. At the opening of the court on that day, this respondent according to his duty and his uniform practice, delivered a charge to the grand jury in which he gave in charge to them several statutes of the United States, and among others, an act of Congress passed July 14th, 1798, entitled "An act in addition to an act for the punishment of certain crimes against the United States," and commonly called the "sedition law." He directed them to inquire concerning any breaches of those statutes, and especially of that commonly called the sedition law, within the district of Delaware.

On the same day before the usual hour of adjournment, the grand jury came into court, and informed the court that they had found no indictment or presentment; and had no business before them, for which reason they wished to be discharged. This respondent replied, that it was earlier than the usual hour of discharging a grand jury; and that business might occur during the sitting of the court. He also asked them if they had no information of publications within the district, that came under the sedition law, and added, that he had been informed, that there was a paper called the "Mirror," published at Wilmington, which contained libellous charges against the government and President of the United States: that he had not seen that paper, but it was their duty to inquire into the subject; and if they had not turned their attention to it, the attorney for the district would be pleased to examine a file of that paper, and if he found any thing that came within the sedition law, would lay it before them." This is the substance of what the respondent said to the grand jury on that occasion, and he believes nearly his words. On the morning of the *next day*, they came into court and declared that they had no presentments to make, on which they were immediately discharged. The whole time therefore, for which they were detained, was twenty-four hours,

hours, far less than is generally required of grand juries.

In these proceedings, this respondent acted according to his sense of what the duties of his office required. It certainly was his duty to give in charge to the grand jury, all such statutes of the United States as provided for the punishment of offences, and among others, that called the sedition act; into all offences against which act, while it continued in force, the grand jury were bound by their oaths to inquire. In giving it in charge, together with the other acts of Congress for the punishment of offences, he followed moreover the example of the other judges of the supreme court, in holding their respective circuit courts. He also contends, and did then believe, that it was his duty, when informed of an offence, which the grand jury had overlooked, to direct their attention towards it, and to request for them, and even to require if necessary, the aid of the district attorney in making their inquiries. In thus discharging what he conceives to be his duty, even if he committed an error in so considering it, he denies that he committed or could commit any offence whatever.

With respect to the remarks which he is charged by this article with having made to the grand jury, relative to "a highly seditious temper, which he had understood to have manifested itself in the state of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington," and relative to "a most seditious printer, residing in Wilmington, unrestrained by any principle of virtue, and regardless of social order;" this respondent does not recollect or believe, that he made any such observations. But if he did make them, it could not be improper in him to tell the jury that he had received such information, if in fact he had received it; which was probably the case, though he cannot recollect it with certainty at this distance of time. That this information, if he did receive it, was correct, so far, as it regarded the printer in question, will fully appear from a file of the paper called the "Mirror of the Times," &c. published at Wilmington, Delaware, from February 5th, to March 19th, 1800, inclusive, which he has lately obtained, and is ready to produce to this honorable court when necessary,

sary, and some extracts from which are contained in the exhibits severally marked No. 7, which he prays leave to make part of this his answer.

And for plea to the said seventh article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said seventh article is alledged against him, and this he prays may be inquired of by this honorable court, in such manner as law and justice shall seem to them to require.

The eighth article of impeachment charges, that this respondent, "disregarding the duties and dignity of his official character, did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their state government and constitution," and also that this respondent, "under pretence of exercising his judicial right to address the grand jury as aforesaid, did endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the government of the United States, by delivering opinions which were, at that time and as delivered by him, highly indecent, extrajudicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partazin."

In answer to this charge this respondent admits, that he did, as one of the associate justices of the supreme court of the United States, preside in a circuit court held at Baltimore in and for the district of Maryland, in May 1803, and did then deliver a charge to the grand jury, and express in the conclusion of it some opinions as to certain public measures, both of the government of Maryland and of that of the United States. But he denies that in thus acting, he disregarded the duties and dignity of his judicial character, perverted his official right and duty to address the grand jury, or had
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any intention to excite the fears or resentment of any person whatever, against the government and constitution of the United States or of Maryland. He denies that the sentiments which he thus expressed, were "intemperate and inflammatory," either in themselves or in the manner of delivering; that he did endeavour to excite the odium of any person whatever against the government of the United States, or did deliver any opinions which were in any respect indecent, or which had any tendency to prostitute his judicial character, to any low or improper purpose. He denies that he did any thing that was unusual, improper or unbecoming in a judge, or expressed any opinions, but such as a friend to his country, and a firm supporter of the governments both of the state of Maryland and of the United States might entertain. For the truth of what he here says, he appeals confidently to the charge itself; which was read from a written paper now in his possession, ready to be produced. A true copy of all such parts of this paper as relate to the subject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his answer. That part of it which relates to the article now under consideration is in these words: "You know, gentlemen, that our state and national institutions were framed to secure to every member of the society *equal* liberty and *equal* rights; but the late alteration of the federal judiciary, by the abolition of the office of the sixteen circuit judges, and the *recent* change in our state constitution by the establishing *universal* suffrage, and the further alteration that is contemplated in our state judiciary, (if adopted) will in my judgment take away *all security for property and personal liberty*. The independence of the national judiciary is already shaken to its foundation; and the virtue of the people alone can restore it. The independence of the judges of this state will be entirely destroyed, if the bill for the abolishing the two supreme courts, should be ratified by the next general assembly. The change of the state constitution by allowing universal suffrage, will in my opinion certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a *mobocracy*, the worst of all possible governments."

“ I can only lament that the *main pillar* of our state constitution has been thrown down, by the establishment of *universal suffrage*. By this shock *alone*, the whole building totters to its base, and will crumble into ruins before *many* years elapse, unless it be *restored* to its original state. If the independency of your state judges, which your bill of rights wisely declares ‘to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people,’ shall be taken away, by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole state constitution, and there will be nothing left in it, worthy the care or support of freemen.”

Admitting these opinions to have been incorrect and unfounded, this respondent denies that there was any law which forbid him to express them, in a charge to a grand jury; and he contends that there can be no offence, without the breach of some law. The very essence of despotism consists, in punishing acts which, at the time when they were done, were forbidden by no law. Admitting the expression of political opinions by a judge, in his charge to a jury, to be improper and dangerous; there are many improper and very dangerous acts, which not being forbidden by law cannot be punished. Hence the necessity of new penal laws; which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever since the beginning of the revolution, which separated us from Great Britain, for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability, such political opinions as they thought correct and useful. There have been instances in which the legislative bodies of this country have recommended this practice to the judges; and it was adopted by the judges of the supreme court of the United States, as soon as the present judicial system was established. If the legislature of the United States considered this practice as mischievous, dangerous or liable to abuse, they might have forbidden it by law; to the penalties of which, such judges as might afterwards transgress it, would be justly subjected. By not forbidding it,
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the legislature has given to it an implied sanction ; and for that legislature to punish it now by way of impeachment, would be to convert into a crime, by an *ex post facto* proceeding, an act which when it was done and at all times before, they had themselves virtually declared to be innocent. Such conduct would be utterly subversive of the fundamental principles on which free government rests ; and would form a precedent for the most sanguinary and arbitrary persecutions, under the forms of law.

Nor can the incorrectness of the political opinions thus expressed, have any influence in deciding on the guilt or innocence of a judge's conduct in expressing them. For if he should be considered as guilty or innocent, according to the supposed correctness or incorrectness of the opinion, thus expressed by him, it would follow, that error in political opinion, however honestly entertained, might be a crime ; and that a party in power might, under this pretext, destroy any judge, who might happen in a charge to a grand jury, to say something capable of being construed by them, into a political opinion adverse to their own system.

There might be some pretence for saying, that for a judge to utter seditious sentiments, with intent to excite sedition, would be an impeachable offence : although such a doctrine would be liable to the most dangerous abuses ; and is hostile to the fundamental principles of our constitution, and to the best established maxims of our criminal jurisprudence. But admitting this doctrine to be correct, it cannot be denied that the seditious intention must be proved clearly, either by the most necessary implication from the words themselves, or by some overt acts of a seditious nature connected with them. In the present case no such acts are alleged, but the proof of a seditious intent must rest on the words themselves. By this rule this respondent is willing to be judged. Let the opinions which he delivered be examined ; and if the members of this honorable court can lay their hands on their hearts, in the presence of God, and say ' that these opinions are not only erroneous but seditious also ; and carry with them internal evidence of an intention in this respondent to excite
sedition,

sedition, either against the state or general government, he is content to be found guilty.

In making this examination, let it be borne in mind, that to oppose a depending measure, by endeavoring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already past, by endeavoring to convince the public that it ought to be repealed, and that such men ought to be elected to the legislature as will repeal it; to attempt in fine, the correction of public measures, by arguments tending to shew their improper nature, or destructive tendency; never has been or can be considered as sedition, in any country, where the principles of law and liberty are respected; but is the proper and usual exercise of that right of opinion and speech, which constitutes the distinguishing feature of free government. The abuse of this privilege, by writing and publishing as facts, malicious falsehoods, with intent to defame, is punishable as libellous, in the courts having jurisdiction of such offences; where the truth or falsehood of the facts alledged, and the malice or correctness of the intention, form the criterion of guilt and innocence. But the character of libellous, much less of seditious, has never been applied to the expression of opinions concerning the tendency of public measures, or to arguments urged for the purpose of opposing them, or of effecting their repeal. To apply the doctrine of sedition or of libels to such cases, would instantly destroy all liberty of speech, subvert the main pillars of free government, and convert the tribunals of justice into engines of party vengeance. To condemn a public measure, therefore, as pernicious in its tendency; to use arguments for proving it to be so; and to endeavor by these means to prevent its adoption, if still depending, or to procure its repeal in a regular and constitutional way, if it be already adopted; can never be considered as sedition, or in any way illegal.

The first opinion expressed to the grand jury on the occasion in question, by this respondent, was that "the late alteration of the federal judiciary, by the abolition of the office of the sixteen circuit judges; and the recent change in our state constitution, by establishing universal

universal suffrage; and the further alteration that was then contemplated in our state judiciary, if adopted;" would, in the judgment of this respondent, "take away all security for property and personal liberty." That is, "these three measures, if the last of them, which is still depending, should be adopted, will, in my opinion, form a system whose pernicious tendency must be, to take away the security for our property and our personal liberty," which we have hitherto derived from the salutary restrictions, laid by the authors of our constitution on the right of suffrage, and from the present constitution of our courts of justice." What is this but an argument to persuade the people of Maryland to reject the alterations in their state judiciary which were then proposed; which this respondent as a citizen of that state had a right to oppose; and the adoption of which depended on a legislature then to be chosen? If this be sedition, then will it be impossible to express an opinion opposite to the views of the ruling party of the moment, or to oppose any of their measures by argument, without becoming subject to such punishment as they may think proper to inflict.

The next opinion is, that "the independence of the national judiciary was already shaken to its foundation, and that the virtue of the people alone could restore it." In other words, "The act of Congress for repealing the late circuit court law, and vacating thereby the offices of the judges, has shaken to its foundation the independence of the national judiciary, and nothing but a change in the representation of Congress, which the return of the people to correct sentiments alone can effect, will be sufficient to produce a repeal of this act, and thereby restore to its former vigor, the part of the federal constitution, which has been thus impaired."

This is the obvious meaning of the expression; and it amounts to nothing more than an argument in favor of that change, which this respondent then thought and still thinks to be very desirable; an argument the force of which as a patriot he might feel, and which as a free man he had a right to advance.

The next opinion is, that "the independence of the judges of the state of Maryland, would be entirely destroyed

stroyed if the bill for abolishing the two supreme courts should be ratified by the next general assembly." This opinion, however incorrect it may be, seems to have been adopted by the people of Maryland, to whom this argument against the bill in question was addressed: for at the next session of the legislature this bill, which went to change entirely the constitutional tenure of judicial office in the state, and to render the subsistence of the judges dependent on the legislature, and their continuance in office on the executive, was abandoned by common consent.

All the other opinions expressed by this respondent, as above mentioned, bear the same character with those already considered. They are arguments addressed to the people of Maryland, for the purpose of dissuading them from the adoption of a measure then depending; and of inducing them, if possible, to restore to its original state, that part of their constitution relating to the right of suffrage, by a repeal of the law, which had been made for its alteration.

Such were the objects of this respondent in delivering those opinions, and he contends that they were fair, proper, and legal objects, and that he had a right to pursue them in this way: a right sanctioned by the universal practice of this country, and by the acquiescence of its various legislative authorities. Such, he contends, is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now necessary to inquire into their correctness; but, if incorrect, he denies that they contain any thing seditious, or any evidence of those improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury, he committed any offence, infringed any law, or did any thing unusual or heretofore considered in this country as improper or unbecoming in a judge. If this article of impeachment can be sustained on these grounds, the liberty of speech on national concerns, and the tenure of the judicial office under the government of the United States, must hereafter depend on the arbitrary will of the House of Representatives and the Senate, to be declared on impeachment, after the acts are done, which it may at any time

there is thought necessary to treat as high crimes and misdemeanors:

And the said Samuel Chase, for plea to the said eighth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said eighth article is alledged against him, and this he prays may be inquired of by this honorable court, in such manner as law and justice shall seem to them to require.

This respondent has now laid before this honorable court, as well as the time allowed him would permit, all the circumstances of his case, with an humble trust in Providence, and a consciousness that he has discharged all his *official* duties with justice and impartiality, to the best of his knowledge and abilities; and, that intentionally he hath committed no crime or misdemeanor, or any violation of the constitution or laws of his country. Confiding in the impartiality, independence and integrity of his judges, and that they will patiently hear, and conscientiously determine this case, without being influenced by the spirit of party, by popular prejudice, or political motives, he cheerfully submits himself to their decision.

If it shall appear to this honorable court, from the evidence produced, that he hath acted in his *judicial* character with wilful injustice or partiality, he doth not wish any favor; but expects that the whole extent of the punishment permitted in the constitution will be inflicted upon him.

If any part of his official conduct shall appear to this honorable court, *stricti juris*, to have been *illegal*, or to have proceeded from *ignorance* or *error* in judgment; or if any part of his conduct shall appear, although not illegal, to have been irregular or improper, but not to have flown from a depravity of heart, or any unworthy motive, he feels confident that this court will make allowance for the imperfections and frailties incidental to man.

He is satisfied, that every member of this tribunal will observe the principles of humanity and justice, and will presume him innocent, until his guilt shall be established by legal and credible witnesses, and will be governed in his decision, by the moral and Christian rule of rendering

granting that justice to this respondent, which he would wish to receive.

This respondent now stands not merely before an earthly tribunal, but also before that Awful Being whose presence fills all space, and whose all seeing eye more effectually surveys the temples of justice and religion. In that time, his accusers, his judges, and himself, must appear at the bar of Omnipotence, where the secrets of all hearts shall be disclosed, and every human being shall appear for his deeds done in the body, and shall be compelled to give evidence against himself in the presence of the assembled universe. To his Omniscient Judge, at that hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accused.

He hath now only to adjure each member of this honorable court, by the living GOD, and in his holy name, to render impartial justice to him, according to the constitution and laws of the United States. He makes this solemn demand of each member, by all his hopes of happiness in the world to come, which he will have voluntarily renounced by the oath he has taken; and he shall wilfully do this respondent injustice, or disregard the constitution or laws of the United States, which he has solemnly sworn to make the rule and standard of his judgment and decision.

SAMUEL CHASE.

A true copy,

ATTEST.

SAMUEL A. OTIS, *Secretary*



